

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

MAR 02 1998

BY JH
DEPUTY CLERK

4 ABU-ALI ABDUR' RAHMAN,

5 Plaintiff,

6 vs.

7 RICKY BELL,

8 Defendant.
9
10

Civil Case # 3-96-0380

Beginning February 6, 1998

CLERK'S COPY

11 TRANSCRIPT OF HEARING
12 BEFORE THE HONORABLE TODD J. CAMPBELL
13

14 APPEARANCES:

15 For the Plaintiff:

Bradley A. MacLean &
William P. Redick, Jr.
Attorneys at Law
Nashville, TN

17
18 For the Defendant:

John H. Baker, III &
Don Ungurait
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Nashville, TN

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23
24 Official Court Reporter:

John W. Tummel, RPR
801 Broadway, Rm. A-839
Nashville, Tn. 37203

1 February 9, 1998.

2 THE COURT: I apologize for this slight
3 delay in getting started. We had technical difficulties.
4 Mr. Tummel's court reporting equipment had some
5 difficulties. That all now has been cured.

6 I was concluding a temporary restraining
7 order proceeding so it caused a slit delay.

8 Are we ready to call our witness?

9 MR. MACLEAN: Before we do, we have
10 exhibit binders. We have two sets. I would like to give
11 one to Your Honor to use. The other is for the witness,
12 and we can treat that as the official one I think.

13 THE COURT: I appreciate that. It is
14 helpful. It is not necessary but helpful. It is hard to
15 get rid of the old law school habits of marking things.

16 MR. MACLEAN: Your Honor, if I could
17 explain, we tried to arrange those chronologically as we
18 could. As we made changes we didn't want to renumber
19 them all. We had been working off that.

20 There are some tabs that may have two of
21 the same number and that is like 55 and 55 A. I don't
22 know if I have an exhibit --

23 THE COURT: We did that some on Friday.

24 MR. MACLEAN: If you look at 20 there
25 are two 20 tabs but one represents 20 and the other is

1 20 A.

2 THE COURT: I recognize you probably can't
3 go out and buy a tab that says 20 A. Some supply store
4 might do it. I follow you.

5 Anything we need to take up before we call
6 a witness?

7 Who is our first witness?

8 MR. REDICK: Neal McAlpin. He is in the
9 courtroom.

10 MR. MACLEAN: Your Honor, could we have
11 the petitioner come into the courtroom?

12 THE COURT: I am sorry. Of course. Ask
13 the Marshal Service to bring Mr. Rahman down. I should
14 know better than to say this but were depositions had
15 held Saturday?

16 MR. MACLEAN: Yes, Your Honor. Two of the
17 witnesses refused to answer questions and the third
18 witness was deposed.

19 THE COURT: So we had depositions of Mr.
20 Boyd and Mr. Beard and Mr. Glanton. I assume Ms. Mann
21 was not to be found in the county.

22 MR. MACLEAN: Right. I don't know what
23 happened. She didn't appear.

24 THE COURT: We can discuss it at a later
25 time, additional efforts in an attempt to locate her.

1 Mr. Glanton was deposed?

2 MR. MACLEAN: Yes, sir.

3 THE COURT: Mr. Boyd and Beard answer any
4 questions at all?

5 MR. REDICK: Just identifying information,
6 name and address, social security number, date of the
7 birth.

8 THE COURT: Were they asked questions
9 relating to incident that occurred, allegedly occurred on
10 or about the time of the death in question as well as the
11 questions related to instances that occurred within the
12 last month?

13 MR. MACLEAN: They were asked about the
14 meeting and refused to answer and asked whether they knew
15 James Jones or Abu-Ali. They were asked if they would
16 answer any further questions. They refused to answer.

17 THE COURT: Were they represented by
18 counsel?

19 MR. MACLEAN: Yes, Mr. George Barrett. He
20 confirmed to me after the deposition they refused to
21 answer any questions beyond their name, age, date of the
22 birth and --

23 THE COURT: Two hour time limit wasn't a
24 problem?

25 MR. MACLEAN: No problem, Your Honor.

1 THE COURT: Are they going to be -- they
2 are under the subpoena from the respondent to appear at
3 this trial, is that right?

4 MR. BAKER: Yes, Your Honor.

5 THE COURT: All right.

6 MR. MACLEAN: We will object to their
7 testimony, Your Honor.

8 THE COURT: This is an interesting case.
9 What can I say.

10 As soon as Mr. Rahman gets here, we will
11 hear from Mr. McAlpin.

12 THE COURT: The petitioner is here.

13 MR. REDICK: We will call our first
14 witness, Mr. Neal McAlpin.

15 THE COURT: All right. If you can step in
16 front of me and raise your right hand, sir.

17 (Whereupon, the witness was duly sworn.)

18 THE COURT: Unless your hat has some
19 religious meaning to you, I will ask you to take it off.

20 A. It does have a religious interpretation.
21
22
23
24
25

EXAMINATION OF NEAL MCALPIN

BY MR. REDICK:

Q. State your name, please.

A. Neal McAlpin, Junior.

Q. Is that your full name?

A. Yes.

Q. Mr. McAlpin, where do you reside?

A. Here in Nashville, Davidson County.

Q. You were admitted to practice law in May of 1984,
that's correct?

A. Yes.

Q. And you had a practice here in Nashville?

A. That's correct.

Q. You were practicing law in Nashville during the
period of the mid '80s?

A. Yes.

Q. Do you recall representing James Lee Jones?

A. Yes, I do.

Q. When did you represent Mr. Jones?

A. I started representing him I believe in 1986,
around February.

Q. What type of practice did you have at that time?

A. I had a largely criminal defense practice at that
time. Mostly on the state trial court level, General
Sessions Court, also some appeals court level. Also I

1 had some practice in some areas of civil. But I was
2 mostly criminal. That was earlier in my practice.

3 Q. What percentage of your work was criminal?

4 A. Probably about 70, 75 percent.

5 Q. Had you had any murder cases?

6 A. Yes, I had.

7 Q. Had you handled many death penalty cases?

8 A. No, not prior to Mr. Jones' case.

9 Q. You had been practicing for approximately two
10 years or maybe a little less than two years when you met
11 Mr. Jones?

12 A. Yes.

13 Q. How did you come to hear about the case?

14 A. I received a call in my office from a person by
15 the name of Allen Boyd.

16 MR. REDICK: Your Honor, if I could, I
17 have an additional exhibit that the state has seen this.
18 It is from Mr. McAlpin's file.

19 THE COURT: All right.

20 MR. REDICK: I think it will be Exhibit
21 Number 127, if I could approach the witness?

22 THE COURT: Sure, go right ahead.

23 Q. Mr. McAlpin, can you identify this document?

24 A. This document is an intake form or intake sheet
25 that was a form that was created in my office as a

1 systematic means of cataloging information pertaining to
2 clients or potential clients.

3 This particular intake sheet was then in
4 my hand, the information was filled out in my
5 handwriting. It shows on February 20, 1986 was the first
6 instance of my office dealing with a case for the name of
7 James L. Jones.

8 Q. Do you know when this was in relation to the
9 commission of the offense for which Mr. Jones had been
10 charged?

11 A. I came to find out it was maybe like a day after
12 his arrest or probably within 24 hours of him being
13 arrested. Possibly 36, 48 hours from the events. Very
14 recently.

15 Q. And does it indicate who made the referral to you?

16 A. Yes. The person that called me was Mr. Allen
17 Boyd. He left his phone number.

18 Q. That is his name down there at the bottom of the
19 intake sheet?

20 A. Yes.

21 Q. That telephone number where, is that telephone
22 number to?

23 A. I understand it is the Nashville Baptist
24 Publishing Board, that Mr. Allen Boyd was also his work
25 supervisor. I believe at the time he called me he

1 probably was at work.

2 Q. Did you take this telephone call at your office?

3 A. Yes.

4 Q. Did you then discuss with Mr. Boyd this case?

5 A. Yes. He called me, basically asked me if I could
6 go and see James Jones. He indicated Mr. Jones was
7 incarcerated at the Criminal Justice Center and he
8 needed a good attorney. I indicated to him that after I
9 got some preliminary information I would go and visit
10 him, and in the process of visiting him I would pull
11 the warrants on file and I would discuss the case with
12 him.

13 I also indicated to Mr. Boyd that I wanted
14 to know if he was the person that was going to be
15 tendering attorney's fees on behalf of Mr. Jones. And he
16 indicated that he would take care of me later.

17 At that point in time, I decided to go
18 visit Mr. Jones to ascertain what his case was all about.
19 Because I didn't get a lot of details from Mr. Boyd.

20 Q. Did you ask Mr. Boyd about the offense?

21 A. No, I didn't ask him about the offense. I decided
22 to go and see what was on the record and start from
23 there.

24 Q. So what did you do?

25 A. I believe on that particular day I went, maybe

1 that afternoon, and went to the Criminal Justice Center,
2 obtained copies of the warrants from the Clerk's Office
3 and made copies and had a chance to go talk to Mr. Jones
4 and confronted him with the documents and asked him
5 questions about his arrest, asked him questions about his
6 knowledge of any transactions alleged in the documents
7 and the kind of situation where he could give me
8 information on what was going on. And in our
9 conversation --

10 Q. Let me interrupt you there. You picked up the
11 warrant and you collected whatever information was in the
12 warrant.

13 Did you collect any other documents?

14 A. I believe there was like a warrant for the arrest,
15 basically the charge of murder, I think also a robbery
16 alleged and also some search warrant documents that were
17 part of the criminal process.

18 Q. You had those -- did I interrupt you?

19 A. No.

20 Q. Did you have those documents with you when you
21 went to see Mr. Jones?

22 A. Yes.

23 Q. Did you get into a discussion, subsequent
24 discussion with Mr. Jones about his knowledge about these
25 matters?

1 A. Yes, I did.

2 Q. At what point in time did you decide to represent
3 Mr. Jones if you had not already decided at the
4 preliminary hearing?

5 A. We got this preliminary conversation, our first
6 conversation and I looked at the documents and it showed
7 me that the preliminary hearing was probably going to be
8 the next day or day after the 20th of February.

9 So, I sort of like had to put the question
10 to him if you wanted me to represent him, and did he have
11 the ability to hire my office.

12 Q. You are talking about Mr. Boyd?

13 A. I was talking to Mr. Jones at this point in time.
14 And I understood he basically didn't have the ability to
15 hire me. He didn't have any money.

16 I asked him about whether or not Mr. Boyd
17 would be in a position to pay attorney fees. I am not
18 sure what his response was. I definitely considered Mr.
19 Boyd a source for the fees at that time.

20 In my first meeting with Mr. Jones, I
21 recognized him from a previous meeting or previous
22 occasion. We sort of talked about that. This was
23 totally aside from any kind of case work, it was more
24 social.

25 Q. You met him before?

1 A. Yes.

2 Q. When he was in the free world?

3 A. Yes.

4 Q. Did you know Mr. Boyd before?

5 A. Yes, I knew him in the sense I knew him when I saw
6 him and we could maybe exchange greetings. But we were
7 not close personal friends. We were acquaintances.

8 Q. I will come back to the first meeting with Mr.
9 Jones later.

10 My question was, at what point in time did
11 you decide you were going to represent Mr. Jones at the
12 preliminary hearing?

13 A. My recollection is that after our first meeting, I
14 received a phone call in my office later that day. It
15 appeared that Mr. Jones wanted to consult with friends
16 and family and called me back.

17 He told me he did in fact want me to
18 represent him. Our first meeting was to just feel
19 each other out. The phone call later was to affirm he
20 wanted me to represent him at the upcoming preliminary
21 hearing.

22 Q. He wanted you to represent him and you determined
23 he was indigent.

24 What were you expectations at that point
25 for compensation?

1 A. My expectations at that point -- I also received a
2 subsequent phone call by Allen Boyd. I basically shared
3 with him the fact I met with Mr. Jones, that we had
4 talked and Mr. Jones had called me back and indicated he
5 wanted me to represent him.

6 Again I asked Mr. Boyd would he be a
7 source of attorney's fees in this case. Mr. Boyd
8 indicated that he would, and we also discussed I really
9 need to find out more about what this case is about
10 before I set a fee amount. And I will get back with you
11 on that.

12 But at that point in time -- I was
13 basically committed to Mr. Jones at that point in time,
14 at least in the preliminary hearing.

15 Q. So then did you then begin to prepare for the
16 preliminary hearing?

17 A. Yes.

18 Q. And in the process of collecting information from
19 Jones and other sources, did you become informed at least
20 in your opinion about the interest of your client
21 vis-a-vis Allen Boyd?

22 A. Yes. I had probably less than 24 hours to prepare
23 for a preliminary hearing in this case. It was my
24 objective to learn as much as possible through the
25 hearing without waiving anything or giving up too much on

1 the defense standpoint, learn as much as possible in
2 terms of the witnesses, et cetera, from the state.

3 Also I brought witnesses for character on
4 behalf of Mr. Jones. One of the witnesses I talked to,
5 Mr. Allen Boyd, about being one of those character
6 witnesses. I put him on at the preliminary hearing.

7 MR. REDICK: Before we get to that, Your
8 Honor, I have another Exhibit 128. These are also
9 excerpts from Mr. McAlpin's file that are copies.

10 Q. I will ask you to look at the notes and tell us if
11 you can identify them?

12 A. Yes, I can. These would be Xerox copies of the
13 notes coming from my case file for Mr. James Jones.

14 Q. These were notes taken from what source?

15 A. These notes would be taken from interviews with
16 Mr. Jones, interviews with potential other witnesses,
17 notes of meetings or discussions with witnesses.

18 They also could be notes in reference to
19 my thought processes, basically for my fact finding.

20 Q. In this excerpt of notes from your file handed to
21 you, could you explain what these notes indicate and what
22 the source of information is?

23 A. These notes appear to be reference to
24 conversations with Mr. Jones in reference this particular
25 case.

1 Q. Look at the first page there that has the date
2 stamp on the right-hand corner of 96.

3 A. I have it.

4 Q. What do those notes mean to you?

5 A. These notes described individuals and their
6 connection and their role or function in this case. On
7 this particular page it talks about Hollie, Mitchell
8 Hollie, Allen which represents Allen Boyd and Beard that
9 represents William Beard.

10 They are like schematic diagrams that show
11 that Allen Boyd lent a gun to James Jones on this
12 particular page. It says Allen Boyd lent a gun to Mr.
13 Jones, that Jones brought it back for Mr. Boyd to put a
14 new stock on it, that his wife Susie was with him when he
15 did that. That William beard owned a store in the
16 Bordeau area on Buena Vista Pike sometime later that
17 store burned down. It was something to do with arson and
18 insurance settlement.

19 Also it indicates that Mr. William Beard
20 was allegedly involved in the running of numbers, that
21 Mr. Beard had a connection with a person named Big Earl,
22 that Big Earl was familiar with drugs in Nashville.

23 And my recollection is that that
24 referenced the drugs -- I guess to drug dealers or drug
25 dealings in Nashville.

1 This first page also talks about Allen
2 Boyd had discussed with Mr. Jones that brothers need to
3 be armed and Mr. Boyd was showing, or had shown to Mr.
4 Jones pictures of him, Mr. Boyd, holding different types
5 of firearms.

6 Q. Look at the next page. I think the date stamp
7 is off the bottom of page but it is date stamped number
8 97.

9 A. I have it.

10 Q. What is that?

11 A. This also is reference to Allen Boyd and some of
12 his statements. In essence Mr. Boyd said we can't be
13 afraid of holding weapons or having weapons. He
14 encourages Mr. Jones to get a weapon. He offered him
15 various of his weapons.

16 And he said that you need to be aware and
17 able to operate firearms in order to be a member of the
18 brotherhood.

19 THE COURT: Mr. McAlpin, what was the
20 source of this information at this point? You were
21 writing this information down?

22 A. This is my interview with Mr. James Jones.

23 Q. Go ahead. What do the rest of the notes
24 indicate?

25 A. They indicate that Michael Hollie, Devalle Miller,

1 Allen Boyd, William Beard and James Jones became a part
2 of sort of like a paramilitary kind of group of people
3 involved in a certain church group; that they had
4 meetings as a group of men; that they had engaged in
5 physical training, karate classes, that they would go and
6 do running at the Polo Park area out at Percy Warner Park
7 all accept Mitchell Hollie.

8 Miller, Boyd, Beard and Mr. Jones all took
9 part in those activities.

10 That during these sessions Allen Boyd
11 appeared to be the leader of the workout of regimen in
12 that Mr. Boyd would have open discussions about cleaning
13 up the black community.

14 Q. Look at the next page that has the date stamp 98
15 on it.

16 Once again, are these your notes?

17 A. Yes, they are.

18 Q. Are these notes taken during your interview with
19 Mr. Jones?

20 A. Yes.

21 Q. What do they indicate?

22 A. On this particular page 98 it says Allen Boyd
23 discussed the things have to be planned out in reference
24 to cleaning up the community, building the community,
25 providing marshal arts and upholding community values,

1 that William Beard -- this is another thought on the same
2 page but talks about William Beard. And William Beard
3 would ride Mr. Jones around showing him different places
4 where drug dealers operated in the black community; that
5 Mr. Allen Boyd had some -- I guess he had some ability to
6 deal with surveillance equipment and had surveillance
7 equipment in that they were engaged in surveillance of
8 certain things or had a plan to have systematic
9 surveillance of drugs where they operated and planned to
10 use videotape recording, binoculars and other
11 surveillance equipment.

12 Q. Look at the next page. Are these your notes in
13 your handwriting?

14 A. Yes, they are.

15 Q. Are these notes taken during your interviews with
16 Mr. Jones?

17 A. Yes, they are. This appears to be the same
18 conversation of the notes from that interview. The date
19 stamp is 99 and talks about William Beard and again
20 reiterates he knew some of the drug dealers or had
21 knowledge of some of the drug dealers and that Allen Boyd
22 knows electronics and surveillance.

23 He also indicates that Mr. Jones was a
24 part of a religious group and that he was more or less
25 kept on the outside of the fringes of the group until

1 about four months had passed.

2 Q. Kept outside by whom?

3 A. The leaders of the group, Allen Boyd and Mitchell
4 Hollie. He was kept on the outside.

5 There was an outer circle and inner
6 circle. The inner circle would be the brotherhood.

7 After he served a period of time like a
8 probationary period, to feel him out, he was brought into
9 the inner circle.

10 That is where he had to engage in physical
11 activities. There was a lot of reinforcement during the
12 physical training activities.

13 This page also indicates that Allen Boyd
14 interviewed Mr. Jones, asked him about his record and --
15 past record and affiliations, whether he had some goals
16 to help the black community.

17 Mr. Jones was observed for a period of
18 four months and then approached by Mr. Boyd to let him
19 know what he found out what was going on in the black
20 community so they would understand those type things.

21 It also indicates that Allen Boyd
22 recognized Mr. Jones' tendency to be fired up or get
23 fired up to become emotional when ideas and topics of
24 concern of the black community were brought up.

25 Q. Look at the next page, if you would. I will ask

1 if you can identify this as your handwriting?

2 A. Yes.

3 Q. Are these notes taken during your interview with
4 Mr. Jones?

5 A. Yes.

6 Q. What do they indicate?

7 A. This particular page discusses that the church
8 that these individuals belong to was the spiritual group,
9 that its intent was to be used as a vanguard to obtain
10 land that could be maintained tax free, that they had a
11 lot of heavy topics and lot of heavy discussions that
12 were not held before women and children who were part of
13 that church or that religious organization and they were
14 primarily reserved for the brotherhood.

15 Mr. Jones and a man named Mr. Devalle
16 Miller worked at the same location with Mr. Allen Boyd,
17 Nashville Baptist Publishing Board; that Mr. Boyd was the
18 supervisor and they talked with Mr. Boyd -- that is Mr.
19 Jones talked with Mr. Boyd every day; that they had
20 permission to go straight to his office.

21 And the last part of the page talks about
22 there was a plan to check out a drug dealer by the name
23 of Patrick Daniels and indicates that Mr. Allen Boyd knew
24 of this plan to check out Patrick Daniels and that Boyd
25 had told Mr. Jones to be careful because Daniels was a

1 low level drug dealer.

2 Q. Be careful in what sense?

3 A. In the sense that I guess as a drug dealer he was
4 on the front line and he would probably have something to
5 protect himself.

6 Q. What is that over in the left side with a circle
7 around it?

8 A. That note says, may have been a practice run. And
9 what that notes represents is that Patrick Daniel was not
10 the end of this -- basically it was a campaign by the
11 religious group to clean up the black community and
12 Patrick Daniel was going to be the first trial run as
13 approaching a drug dealer to convince them not to sell
14 drugs or not to bring poison into the black community.

15 Q. Look at the next page, date stamp 123. I will ask
16 you if this is your handwriting?

17 A. Yes, it is.

18 Q. Are these notes taken in your interviews with Mr.
19 Jones?

20 A. Yes.

21 Q. What do they indicate?

22 A. It talks about black survivorship cadre being
23 groups of black individuals of conscience from Indiana,
24 California, Atlanta and a group known as the Yawhi
25 Hebrews (ph).

1 It was my understanding that this
2 particular religious group was called -- the one
3 individuals talked about so far in Nashville, a religious
4 grouped called Southeastern Church of the Gospel Ministry
5 or something of that nature. That these other cadres in
6 Indiana, Atlanta, et cetera were similar type groups in
7 different parts of the country.

8 And that there was some communication or
9 potential communication between this particular group in
10 Nashville and those groups.

11 The last part of the page is reference to
12 Patrick Daniels was introduced to Mr. Jones, I believe by
13 Big Rob.

14 Q. What does the note beneath that say?

15 A. Project Daniel, and then under that it says -- has
16 a statement, drug war behind recent stolen drugs. I am
17 not sure exactly -- I don't recall exactly the connection
18 between that.

19 Q. What I was referring to that, what does it say Pat
20 introduced by Big Rob?

21 A. It says on the project Daniel, Patrick introduced
22 by Big Rob. Pat meaning Patrick Daniels was selling
23 drugs to kids in the black community.

24 Q. So did Mr. Jones tell you Daniels was selling
25 drugs to kids?

1 A. Yes.

2 Q. Was he concerned about that?

3 A. Yes. Mr. Jones looked upon introducing drugs in
4 the black community -- especially among young people --
5 as being a grievous offense. He talked about the fact
6 many young black women would be introduced to drugs and
7 it would cause them to compromise their honesty.

8 Q. Look at the next page date stamped 124. I will
9 ask if you can identify the handwriting there.

10 Is that yours?

11 A. Yes.

12 Q. Are these more notes taken basically of the
13 interview with Mr. Jones?

14 A. Yes.

15 Q. Tell us what that page of notes means to you.

16 A. This particular page discusses Allen Boyd knew of
17 Patrick Daniels through his discussions with Mr. Jones,
18 that Mr. Jones stated to Allen Boyd in some conversation
19 they had that Patrick Daniels was selling drugs to kids
20 and Mr. Boyd responded by asking a question. He said,
21 can you handle it? And then told Mr. Jones that all of
22 the money you get from this must go to the church.

23 Q. What is that beneath that line?

24 A. Further goes on to talk about the brotherhood,
25 explained a plan to Mr. Jones and that in setting out

1 this plan they basically gave him instructions saying if
2 we can make it together, we eliminate people that are a
3 hindrance to the black race.

4 Q. Look at the next page. Are these your notes?

5 A. Yes.

6 Q. What do they indicate to you?

7 A. That this plan had an intent and that intent was
8 to scare drug dealers from dealing in drugs in the black
9 community, to scare them from dealing drugs to children
10 or in the presence of children and that the plan was to
11 be effective so that to make drug dealers aware they were
12 being watched; that the places they dealt drugs was being
13 watched; the places they lived was being watched, that
14 this cadre of individuals intent was to make it difficult
15 to sell drugs.

16 And in the case of Patrick Daniels being
17 the first case, Patrick Daniels was going to be made an
18 example of and that the intent was to spray with red
19 paint on the walls and on his house this was a drug
20 dealer.

21 That pursuant to this plan or campaign,
22 Allen Boyd provided binoculars and that Mr. Jones and Mr.
23 Miller went and got the red paint, the duct tape and
24 those items were bought at the Farmers' Market warehouse
25 store.

1 Allen Boyd suggested duct tape be used as
2 the best thing to bind up the drug dealers.

3 Q. Look at the next page. It is date stamped 126.
4 Are these your notes?

5 A. Yes.

6 Q. What do they indicate?

7 A. They indicated that on February 19, 1986 that Mr.
8 Jones returned the binoculars that Mr. Allen Boyd lent
9 him a few days earlier, brought it back. And that
10 Devalle Miller gave the duct tape and red spray paint to
11 Allen Boyd on that day or the next day; that Mr. Jones
12 saw Allen Boyd every day at work and it was indicated
13 that Mr. Jones would be possibly used as an enforcer of
14 this religious groups plan and campaign and that he would
15 be instrumental in helping carrying out attacks against
16 other drug dealers when it was determined -- they had
17 determined a target, according to Mr. William Beard's
18 surveillance and his connections; Mthat Mr. Jones had
19 talked to Allen Beard --

20 Q. You mean Allen Boyd?

21 A. Allen Boyd. Excuse me. Allen Boyd on the day
22 after.

23 Mr. Boyd told him at that time that he
24 should show no guilt, that Mr. Jones should show no
25 guilt, that he should not run and that at the time Mr.

1 Boyd's statements was the result of Mr. Jones telling him
2 what had transpired and that Mr. Miller had talked to Mr.
3 Boyd that day as well.

4 Q. Look at the next date stamp. What do they
5 indicate, if they are your notes?

6 A. They are my notes. They indicate that at some
7 earlier time that Mr. Jones had been stabbed at work in
8 an argument with some co-workers.

9 The argument was over African ancestry
10 that Mr. Jones stayed off work one month. When he
11 returned after the stabbing, that Devalle Miller was
12 working at Nashville Baptist Publishing Board and William
13 Beard gave Devalle Miller a handgun, a pistol two or
14 three weeks prior to the middle of February, 1986.

15 Q. So, Mr. McAlpin, this was some of the information
16 you relied on in your representation of Mr. Jones, is
17 that correct?

18 A. Yes.

19 Q. Did you attempt to interview others among these
20 people that he identified to you?

21 A. Yes, I did.

22 Q. Who did you interview or attempt to interview?

23 A. I talked to Mr. Allen Boyd who was the person that
24 introduced me, in essence, to this case and Mr. Jones.

25 My first discussions with him were one

1 in reference to identifying Mr. Jones and understanding
2 if he was going to on Mr. Jones' behalf pay attorney
3 fees.

4 When I first got connected with this case,
5 I learned early on it was a very short time for a
6 preliminary hearing. I tried to gather as many facts as
7 I could so I could represent my client.

8 At that time my subsequent conversation
9 with Mr. Boyd, I asked him to come as a character witness
10 to testify. Later on I talked with --

11 Q. Before you move on, let me ask you this. In this
12 conversation with Mr. Boyd, did he continue to want you
13 to represent Mr. Jones?

14 A. Yes.

15 Q. Did you ask him questions about the information
16 you collected from Mr. Jones?

17 A. Not at that time. Not at that time. Because the
18 preliminary hearing was very, very soon. I asked him to
19 come and be a witness primarily on the issue of
20 character. Maybe something would reflect on a bond
21 criteria.

22 Q. So, did Mr. Boyd testify at the preliminary
23 hearing?

24 A. Yes, he did.

25 Q. Tell us about that.

1 A. I thought it was very interesting because when I
2 called him as a witness for the defendant, he was very
3 reluctant to answer very basic questions, that he knew
4 Mr. Jones, that he was his supervisor, that they had a
5 close working relationship.

6 And his reluctance to answer these
7 questions forthright and candid gave me an idea something
8 was below the surface. It appeared as though he was
9 trying to distance himself from Mr. Jones or any
10 knowledge of Mr. Jones, yet I knew he had called my
11 office for me to first go talk to Mr. Jones.

12 So, I was seeing two faces, one a public
13 face and one that was a private face.

14 And based upon my further discussions with
15 Mr. Jones -- because the day before the preliminary
16 hearing I got involved with just meeting Mr. Jones and
17 meeting about the case, and prior to the hearing I had a
18 chance to speak in more depth with Mr. Jones. I was
19 understanding this case was about the death of Patrick
20 Daniel and aggravated assault of Norma Norman.

21 I understood it was a campaign by a church
22 to eliminate drug dealing in the black community and Mr.
23 Allen Boyd was part of that church and part of that
24 campaign.

25 So, it became very apparent to me that Mr.

1 Boyd on the witness stand was not able to be forthright
2 and that his interests appeared to be in conflict with
3 Mr. Jones' interests.

4 Q. Did you talk to any of the other people named
5 by Mr. Jones to you as being involved in this church
6 group?

7 A. Yes, I did. I talked with Mitchell Hollie.

8 Q. Describe that conversation with him.

9 A. I asked Mr. Hollie to come to my office. After we
10 had gone through the preliminary hearing the case is
11 moved to the Fifth District Court.

12 I was preparing to try to get a bond set.
13 So, I was kind of taking people who were part of this
14 church again to be character witnesses to maybe create a
15 scenario that would allow the court to understand Mr.
16 Jones as a person that was responsible and a caring
17 person.

18 So, I asked Mr. Mitchell Hollie to come to
19 my office in preparation for that motion as well as to
20 give basic background about the case.

21 Mr. Mitchell Hollie came to my office and
22 he was very reluctant to be candid with me. He was very
23 defensive, very guarded in his responses, if he responded
24 in saying anything at all. I noticed he was sweating
25 profusely just in my office, and all the body language of

1 being very tight and holding things in. It let me I
2 guess further feel the energy I first felt when I
3 examined Mr. Boyd on the witness stand, that I was
4 getting a block -- I wasn't getting the right
5 information, I was maybe again stepping on their toes.

6 Q. Did you talk to anybody else involved in this
7 religious group?

8 A. I am thinking I talked to William Beard but I am
9 not sure if I recall that conversation. I remember
10 several of Mr. Boyd -- Mr. Beard -- and maybe Mr. Hollie
11 all came to the preliminary hearing but things were
12 happening so fast I didn't have a chance to interview
13 them prior to the hearing.

14 I brought Mr. Boyd on primarily for the
15 character issue. I made contact and got their numbers
16 and stuff like that so I could contact them and talk to
17 them.

18 I don't recall having a conversation with
19 Mr. Beard. There were other persons that I contacted
20 that were connected with the church that we talked about
21 this morning.

22 Q. Did you have further conversation with Mr. Boyd
23 about your fee in the case?

24 A. At the preliminary hearing and after his
25 performance on the witness stand, I determined for myself

1 that it would be fruitless to pursue receiving attorney
2 fees from Mr. Allen Boyd on behalf of James Jones.

3 Q. For what reason would it be fruitless?

4 A. I first felt it would be ethically irresponsible
5 because I felt they had a conflict of interest and I felt
6 that I would be less than doing, I guess, a proper thing
7 an attorney would do. I felt there was a conflict of
8 interest so I could not accept the fee from Mr. Boyd.

9 I told Mr. Jones right after that point in
10 time, I said I wouldn't take a dime from him.

11 Based upon my connection with Mr. Jones at
12 the time, we had some kind of affinity that allowed me to
13 say, look, I will take your case, I will work your case
14 and once I sort of walked in the door, I said I will take
15 it, go with it. I am not looking for attorney fees from
16 Mr. Boyd or the other people in that group.

17 Q. So you decided to commit yourself to the case?

18 A. Yes.

19 Q. Did you have any alternative for a source of
20 fees?

21 A. The only alternative would be to file an affidavit
22 of indigency and ask the court to appoint me to represent
23 Mr. Jones.

24 So once it got to the Fifth Circuit -- I
25 probably have been in that situation before in Walter

1 Kurtz' courtroom.

2 Q. Did you have plans to do that?

3 A. No, I didn't. Because I had tried it before and
4 it didn't work out like that.

5 Q. Were you expecting to represent him for nothing?

6 A. Yes.

7 Q. Now, you did represent him on a small civil
8 matter, did you not?

9 A. Yes, I did.

10 Q. Can you describe that.

11 A. It was a Workers' Compensation matter that was
12 ripe for settlement, out of Chicago, and he had contacted
13 an attorney's office there and I just kind of acted on
14 his behalf and worked it out. The settlement came to
15 him, under a \$1,000.

16 I guess his offer to me was to give me a
17 portion of that to help get me some compensation from
18 him. I told him that would be fine.

19 Q. Did you take a portion of it?

20 A. Yes, I did.

21 Q. What portion?

22 A. I believe I took one-third.

23 Q. You say it was -- total amount was less than a
24 thousand. You took a third of that?

25 A. Yes. I think the total amount was about 800

1 something dollars. I think I took about 250.

2 Q. Something less than \$300?

3 A. Yes.

4 Q. And you collected no money from any source in
5 your representation of him in the charges before this
6 Court?

7 A. That's correct.

8 Q. Now, you have testified that the report that came
9 to you from Mr. Jones was that there was this plan to try
10 to rid drug dealers from the community, is that correct?

11 A. That's correct.

12 Q. Did you receive any information from any source
13 that led you to disbelieve that account?

14 Mr. Jones report to you he used
15 marijuana?

16 A. Yes. He told me he used marijuana.

17 Q. Could you explain to us the apparent inconsistency
18 there? What was his attitude? What was Mr. Jones
19 attitude about his personal use of drugs?

20 A. He represented to me at a point in time -- first
21 of all he recognized me as being a different kind of
22 lawyer, maybe because I have dreadlocks and I have a
23 different kind of look. Maybe my ponytail is longer than
24 yours. He related to that.

25 He was saying, my Rastafarian brother. I

1 said, I am not Rastafarian, I am Muslim. He would relay
2 his experiences, and one of his experiences was spending
3 some time with native American people and that things
4 came from the earth were provided for us and that to take
5 of them should be done reverently.

6 He talked about his use of marijuana as
7 being a sacrament, a religious connection. He also
8 indicated to me he experimented with peyote when he was
9 with the native Americans and he felt this, too, was a
10 sacrament and he could relate to that.

11 He also related to me his disdain for I
12 guess narcotic drugs, hard drugs such as cocaine and
13 crack and things that have proliferated the black
14 community. He said these things are poison.

15 He made a clear distinction of sacrament
16 and poison.

17 And one of the things he talked about in
18 terms of that was again he talked about the fact the
19 young children were being exposed to this poison and
20 being hooked and they were like young women would become
21 alcoholics and young men would be everything from dope
22 pushers to addicts, persons who would be involved in
23 stealing, robbing and things of that nature.

24 Q. Was he under the impression that Mr. Patrick
25 Daniel was selling drugs other than marijuana?

1 A. Yes. In fact pursuant to this surveillance he
2 became aware Mr. Daniels had been selling cocaine.

3 Q. Did you ask Mr. Jones to describe to you what
4 happened in Patrick Daniels' apartment that night?

5 A. Yes.

6 Q. Did he?

7 A. Yes, did he.

8 Q. Tell us about that?

9 A. He indicated that he had been given a rifle by
10 Allen Boyd maybe a few days before this and they had
11 basically briefed each other on what to do and how to do
12 it. It was not something he was doing by himself, he
13 thought up to do by himself.

14 But he and Mitchell Hollie along with Big
15 Rob or Big Earl, one of these guys that knew Patrick
16 Daniels -- they had a guy that knew Patrick Daniels that
17 come and introduced them, take them to his house and
18 introduce them.

19 At that point in time Mr. Jones created a
20 scenario where he said I want to buy such and such from
21 you. Can I come back, and by that they set up an
22 appointment to do it later that day or evening.

23 When that time came, Mr. Jones and Mr.
24 Devalle Miller came to Mr. Patrick Daniels' residence,
25 that they came in and appeared to be trying to do this

1 transaction that they discussed earlier and at a certain
2 point in time they brought their weapons out.

3 Q. Did he tell you whether or not the weapons were
4 loaded or unloaded?

5 A. He indicated to me the shotgun was not loaded.
6 The shotgun. He had the shotgun. He also indicated that
7 the Devalle Miller had a pistol and I believe he also
8 indicated that was not loaded. It goes back to the fact
9 they were trying to scare them. They weren't there --
10 didn't go there with the intention to kill them but to
11 scare them and create this effect that we will be
12 watching you and we don't like what you are doing.

13 Q. And then what did he tell you happened?

14 A. He says that once they pulled the weapons, there
15 was like some children there. They made sure the
16 children's room was closed. I believe Patrick Daniels
17 had a girlfriend that lived there, and told them to close
18 the door where the children were.

19 There was a little dog. They said take
20 the dog and put the dog up. And my recollection is that
21 they took the duct tape and they made him lie on the
22 floor and bound their hands and feet.

23 Sometime I believe they bound their mouth
24 and eyes or something of that nature. I don't think they
25 did that at first. They came back and did it later.

1 From that point in time, Mr. Jones told me
2 that another individual came to the address and they
3 left, Devalle Miller and Mr. Jones left, and they left
4 the other individual at the address. After they left
5 that was the end of the transaction.

6 Q. Did he identify to you a name of the third
7 individual?

8 A. He identified that third individual as a person by
9 the name of Sam Blackstock.

10 Q. Did this continue to be his account of what
11 happened?

12 A. Yes.

13 Q. Did there come a point in time that changed?

14 A. Yes.

15 Q. Describe to us how that happened?

16 A. In my representation of Mr. Jones, he was
17 interested in resolving this case without a trial and he
18 instructed me to engage the District Attorney General in
19 plea negotiations.

20 As part of that negotiation, he offered
21 and instructed me to offer information to the District
22 Attorney's Office in reference to this person named Sam
23 Blackstock.

24 General Zimmermann came back to me at some
25 point later and indicated he had done some investigation

1 and tried to determine who Sam Blackstock was, where they
2 could find him and his connection to this case. Mr.
3 Zimmermann also told me they couldn't find no Sam
4 Blackstock and he questioned whether or not Sam
5 Blackstock even existed.

6 At this point in time I talked to Mr.
7 Jones about their conversation, and I am not sure if he
8 came with a different version of the story at that moment
9 or maybe after thinking about it for a few days.

10 He did change his story in the reference
11 that he said there was no Sam Blackstock, that a third
12 person didn't come to Patrick Daniels' home on that
13 particular evening.

14 THE COURT: You said a third person did
15 not come?

16 A. Did not come.

17 THE COURT: Okay.

18 A. And my question again was to him, what really
19 happened. If Sam Blackstock didn't come and you told me
20 that, is there something else you told me that we need to
21 correct now?

22 He basically, you know, told me no, I just
23 created that because I just created it. But I said, what
24 is the real story?

25 Basically he took me through the same

1 scenario minus Sam Blackstock.

2 One of the things that was interesting, he
3 never could confirm that he was a witness to anyone being
4 stabbed or killed before or after the Sam Blackstock
5 story.

6 Q. Let me make sure I understand what you're saying.

7 After he gave up the Sam Blackstock story,
8 and just in general terms, did he say what happened in
9 that apartment?

10 A. He related to me that -- he relates to me at this
11 point in time after he says Sam Blackstock wasn't there,
12 that just didn't happen, then he talks to me about the
13 fact that the night he went to Patrick Daniels' house
14 that before he went, he had taken some hallucinogenic
15 type drug, maybe some mescaline or LSD, and that when he
16 got there it was something the way the voices were, the
17 way he heard vocal quality of the people there that
18 something changed at that point in time and maybe his
19 perception what was going on changed for him.

20 He was saying maybe the hallucinogenic
21 drug was kicking in at that point in time. He was
22 relaying the taping of the hands took place and taping of
23 the legs took place.

24 After that certain point he was unable
25 to report to me what really happened other than going

1 home and going back to Devalle Miller's house where his
2 wife was and staying at Devalle Miller's house and trying
3 to, you no, rest that night, trying to be still, you
4 know.

5 That was the essence of the change. He
6 gave me some additional facts.

7 I questioned him. I said, you were out on
8 this campaign to stop drugs in the black community and
9 you take drugs in order to go there? He talks to me
10 about the fact the tradition of the native American
11 warrior or the tradition of the warrior to prepare
12 yourself for a certain battle or holy war which he
13 considered himself a part of.

14 This was sort of a tradition, to take
15 something to make you feel this and make you able to go
16 in and do what you have to do.

17 And again he distinguished that from
18 cocaine or other types of narcotic drugs. That was the
19 change.

20 Q. When you say he was unable to tell you, do you
21 mean he presented himself to you as if he didn't want to
22 tell you or he presented himself to you as if he couldn't
23 tell you?

24 A. As if he couldn't tell me. As if, you know, I
25 guess at the point in time he stopped creating characters

1 to bring into the scenario. He came clean as best he
2 could.

3 It appeared to me he came clean as best he
4 could. He was, you know, sincere, candid with his
5 description at that time of what happened and what he
6 recalled happened.

7 Q. You said you seen or met Mr. Jones prior to seeing
8 him in the jail. When was that?

9 A. Maybe a year or two prior to this time. I am
10 thinking maybe at least a year, approximately two years
11 prior to the time. I was going to a Yansey (ph)
12 gathering in probably December, the last part of December
13 at the Mitchell Public Library Building on Monroe Street
14 around Ninth Avenue. After that time it was called an
15 African-American museum.

16 This particular gathering was sponsored by
17 several organizations in the black community.

18 As I arrived there, I recognized Devalle
19 Miller. And he was getting out of a car parked where I
20 was getting out, and walked to the building. I remember
21 Mr. Miller because he had a book with him.

22 We had a conversation. I said,
23 interesting cover. He showed me the cover. It was a
24 subject matter he was interested in. In fact, when I
25 asked about his book, he sort of like got real

1 conversational about it. It turned on a light inside.
2 He was excited about this book and subject matter.

3 Inside the Yansey it was a very
4 interesting program, a long program. Toward the end of
5 the program they had different people who wanted to share
6 something, maybe their talent, maybe a poem or dance or
7 whatever.

8 Devalle Miller and James Jones and Susie
9 Jones, Mr. Jones' wife at that time, did a presentation.
10 They played a song from an album known as Earth Crisis.

11 When I had my first meeting with Mr. Jones
12 when he was incarcerated, it sort of clicked in. We sort
13 of relived this little experience. I told him where I
14 knew him from. I talked about the song. Because I
15 remember Susie, his wife, had a very beautiful voice.
16 And they sang the song. The song talked about air
17 pollution, water pollution, drugs infesting our
18 neighborhoods, had a refrain who would save the human
19 race, who will save the human race. They all took part
20 in this singing and chanting while the record played.

21 It was very interesting. I recognized the
22 spirit overtaking Mr. Jones at the time, emotion of the
23 moment reaching him and his eyes swelling up in tears and
24 actually just crying.

25 It is something that keyed me in on

1 recognizing who this person was behind the glass I was
2 talking to. I said you may not remember me but I
3 remember you.

4 Q. So, in your representation of him, based upon your
5 experience in your representation of him, how do you
6 recall James Jones, what type person is he?

7 A. Mr. Jones is a very serious minded person. He is
8 an emotional person. He is a caring person. He is
9 political in the sense that he cares about his community,
10 he identifies with his community and he is not afraid of
11 working hard.

12 He had a true desire to clean up the black
13 community, to make it an environment where children could
14 grow up and live productive lives.

15 He in essence is what I will call a true
16 believer in that he is cause oriented and once he aligns
17 himself with a cause, he would do what was necessary to
18 achieve it.

19 Q. Would you describe him as easy or difficult to
20 influence?

21 A. I think manipulative person could find his buttons
22 very easily.

23 Understand, he had certain things he
24 believes in. They could portray themselves to believe in
25 those same things. He very easily could align himself

1 with that person because he could trust them easily. He
2 could be influenced by them.

3 Q. Do you think he is subject to manipulation?

4 A. I think we all are, but I think James Jones is,
5 too, maybe more so.

6 Q. Did you have any conversations with him about the
7 Islamic faith?

8 A. Yes, I did.

9 Q. Are you Muslim?

10 A. I am Muslim.

11 Q. And what was his attitude about his faith?

12 A. He appeared to be very interested in Islam. He
13 appeared interested in developing his spirituality and
14 often times after we would have an attorney/client
15 conversation in reference to the case, we would get to a
16 point where we could cut that off and we would just talk
17 about questions -- about things that were interesting to
18 him or myself. He had a lot of things about Rastafarism
19 and I told him I really can't answer that because I am
20 not Rastafarian. I am Muslim. And the orthodox was the
21 belief -- he had questions about that and I tried to
22 answer them as best I can.

23 Q. What is Kalima?

24 A. Kalima is a very powerful and short prayer. It is
25 a prayer said in the presence of other Muslims that is

1 the way one becomes Muslim. It is similar I guess to
2 baptism in the Catholic Church or Christian Church. It
3 is the way of beginning.

4 At some point in time in my personal
5 meeting with him, his interest in Islam made me to try to
6 get some things for him. He took his --

7 (Witness speaking in foreign language)

8 THE COURT: Let the record reflect Mr.
9 Tummel was unable to write it down unless you slow down
10 and spell it if necessary. You might summarize what you
11 did or otherwise --

12 (Witness speaking in foreign language.)

13 Q. Tell us what that means.

14 A. That means I profess that there is no --

15 (Witness speaking in foreign language)

16 A. I profess that Mohammed is the messenger. And
17 these two statements said with sincerity and
18 understanding allows one to become a Muslim.

19 Q. How many times do you suppose you visited Mr.
20 Jones while he was in custody?

21 A. I would estimate more than 10, more than 15.
22 Maybe between 15 and 20.

23 Q. During the trial of this case of Mr. Jones did he
24 wear a Khamise to trial?

25 A. Yes.

1 Q. Do you know anything about it?

2 A. Yes.

3 Q. What is it?

4 A. A Khamise is a very nice shirt, modest shirt,
5 loose fitting. Usually the buttons come down all the way
6 down to mid chest. And it is a very nice garb. It is
7 something you can wear when you make prayer.

8 Q. Do you know where he got the Khamise he wore at
9 trial?

10 A. I provided that Khamise. It was handmade for him.

11 Q. Let me ask you some questions about your
12 representation of Mr. Jones.

13 Do you recall, other than people you have
14 mentioned, any other witnesses you interviewed?

15 A. I interviewed Maryum Shakir, I interviewed Mark
16 Garafola.

17 Q. He was a detective with Metro, is that correct?

18 A. Yes.

19 Q. Did you glean any information from him about the
20 case?

21 A. I am thinking we talked about the case. We talked
22 about different issues. I know there was a car involved,
23 we talked about that.

24 We talked about trying to get the car
25 released and his discussion to me was that tires on the

1 car were being used to match up some samples outside
2 Patrick Daniels' house.

3 We talked about what happened at the point
4 of arrest.

5 Q. Did he tell you anything about Mr. Jones'
6 condition when he was taken into custody?

7 A. I don't recall what he said. If he did, I don't
8 recall what he said at this time.

9 Q. I think you have some exhibit books up there. I
10 will ask if you can look at Exhibit 11 and ask you to
11 tell us what this is.

12 A. Exhibit 11 is a document filed by my office on
13 behalf of James Jones styled request for discovery.

14 After the indictment, and he was arranged
15 in this case, I filed this on his behalf to obtain from
16 the state any discoverable evidence, exculpatory
17 evidence, reports of any of the evidence.

18 Q. Basically this is an omnibus discovery request,
19 whatever you have a right to?

20 A. Exactly.

21 Q. This was filed on August 14, 1987?

22 A. Actually 1986.

23 Q. I am sorry, 1986.

24 I would like you to look at Exhibit Number
25 12 and get you to tell us what this is.

1 A. Exhibit 12 appears to be the first response to my
2 request. This response was filed by the state giving
3 information that was requested under the Exhibit 11.

4 Q. Now, the certificate of service indicates that it
5 was certified on August 21, 1986. The file stamp is
6 illegible on my copy.

7 This is apparently within a week after
8 your discovery request, this response came to you, is
9 that right?

10 A. Yes.

11 Q. Look over about three pages over attached to the
12 state's response is a document that has a date stamp
13 432.

14 Do you see that? 482?

15 A. Yes, I see it.

16 Q. Do you recognize that?

17 A. Yes. Forensic crime lab report.

18 Q. If I could just maybe abbreviate this a little
19 bit. It indicates a kitchen knife was submitted for
20 analysis for prints and the results indicate that there
21 were no prints located on the knife, is that correct?

22 A. That's correct.

23 Q. Look on over about seven or eight pages. You will
24 see a page date stamped 491.

25 A. I have it before me.

1 Q. And look up there at the very top where it says
2 something, some remarks?

3 A. Compare blood on blue pants.

4 Q. Read what that says, the forth line.

5 A. Compare blood on blue pants to both victims.
6 Compare mud on shoes to soil samples from the scene.
7 Check coat for blood stains. Compare to victims if
8 found. Compare mud on blue pants to sample from scene.
9 Compare something on knife to both victims' blood.
10 Compare tire cast from tires from vehicle. Compare to
11 anything found on black coat. Something about the
12 knife.

13 Q. Super glue and laser knife, fingerprints?

14 A. Yes, that is a what it appears too say.

15 Q. Turn over three more pages at the page that
16 indicates another TBI Lab report and it is date stamped
17 on bottom right-hand corner 493.

18 Do you see several things listed there
19 almost to the middle? Do you see number six?

20 A. Number six says one man's black wool coat
21 identified as recovered from 801 Inverness Apartments,
22 D-5.

23 Q. Look over on the next page of the same report date
24 stamp page 494.

25 Do you is where it says results?

1 A. Results.

2 Q. Look at the bottom line there. What does it
3 say?

4 A. No hair was recovered from Exhibit 6, black
5 coat.

6 Q. Okay. Look at Exhibit 19 if you would. Tell us
7 what that is.

8 A. This document was the state's supplemental
9 response number two to defendant's request for
10 discovery.

11 Q. And the certificate -- the file date indicates
12 October 14, 1986. The certificate indicates October
13 10th.

14 So, you must have received it about that
15 time, is that correct?

16 A. Yes.

17 Q. Turn to the page after this supplemental response.
18 Attached to that is a document from the Tennessee Bureau
19 of Investigation laboratory report. It has a date stamp
20 number 552.

21 A. I have it.

22 Q. Do you see that?

23 A. Yes.

24 Q. Now, is this a lab report concerning a search for
25 blood?

1 A. Yes, it is.

2 Q. Okay. Do you see items number three, four and
3 six?

4 A. Yes.

5 Q. What are those items?

6 A. Item three is a pair of blue work pants identified
7 from 801 Inverness Apartments D-5. Number four is a pair
8 of blue work pants identified from 801 Inverness
9 Apartments, D-5 and black coat, 801 Inverness, D-5.

10 According to my intake sheet and
11 information that address was address of James Jones.

12 Q. Do you see the results there? See where it says
13 number three under results?

14 A. Results on number three, it says test failed to
15 indicate the presence of blood stain.

16 Q. Turn the page over to the next page of the
17 report.

18 A. Number four states that tests failed to indicate
19 the presence of blood staining.

20 Number six indicates the test failed to
21 indicate the presence of blood staining.

22 Q. So, this report indicates that on two pairs of
23 work pants and a black coat taken from the defendant's
24 residence there was no blood stains found?

25 A. That's correct.

1 MR. REDICK: Your Honor, I have another
2 exhibit that comes from Mr. McAlpin's file, 129.

3 THE COURT: Thank you.

4 Q. I would ask Mr. McAlpin to identify that.

5 A. This document is written in my hand and --

6 Q. Are these notes taken as a result of an interview
7 or are these notes -- what are they?

8 A. These notes are part of my work as Mr. Jones'
9 attorney in assessing what I felt were salient points in
10 his defense.

11 Q. These are your mental impressions?

12 A. Yes.

13 Q. Your work product, if you will?

14 A. They are my work product. This may be the fact
15 that is part of a conversation what I am explaining to
16 him and advising him as to what I thought his case was
17 about.

18 Q. You have these things numbered on two pages?

19 A. Yes.

20 Q. One through nine. Could you identify what these
21 are and what their significance is?

22 A. It says one. Murder weapon was a knife. No
23 fingerprints found on the knife. Two --

24 Q. What is the signature of that?

25 Why did you write that down?

1 A. Because this is an issue of the state's burden of
2 determining, one, if a crime was committed, who did it.

3 If in fact there are no fingerprints on
4 the murder weapon then that doesn't tie that weapon to
5 Mr. Jones.

6 Q. What is number two?

7 A. Number two is that allegation in the case was
8 involving robbery or taking the money at this particular
9 address where Patrick lived.

10 Number two, the allegation that the purse
11 was open to steel money, and there were no fingerprints
12 tied to Mr. Jones definitely on the purse.

13 Q. Was there any information you had that indicated
14 to you Mr. Jones had took any money?

15 A. My conversations with Mr. Jones was that he didn't
16 take any money nor did he go there to take any money.

17 Q. Did you have any information from any other source
18 that indicated to you he had taken money?

19 A. The only -- only the allegation in the state's
20 warrant and allegation in the state's indictment.

21 Other than that, no one had come forward
22 with that kind of information.

23 Q. Look at number three there. What is that?

24 A. Number three is that Mr. Jones had a shotgun but
25 he did not use the shotgun to shot any rounds.

1 Q. What does that indicate to you?

2 A. That indicates that if he went to Patrick Daniels'
3 house for the purpose of killing Mr. Daniels, maybe he
4 would have used the gun. Maybe the gun would have been
5 loaded and he would have had rounds and used it.

6 Q. What is number four?

7 A. Number four points out that the forensic testing
8 of Mr. Jones' pants and coat for blood matching the
9 victims in this case came out to be negative.

10 Q. And what was the significance of that?

11 A. This case involved a very brutal stabbing of Mr.
12 Patrick Daniels whose life was taken and Norman Norman's
13 whose life was spared. It was a miracle she survived.

14 There was a lot of blood involved and a
15 person being involved in a stabbing of that nature more
16 likely than not would have a great deal of blood on them,
17 on their coat.

18 Q. Look at number five. What is that?

19 A. Number five indicated that the shotgun that Mr.
20 Jones had taken to this location and took away from the
21 location and was confiscated by the police and held as
22 evidence in this case was not sent through any
23 fingerprint analysis. There was no testing for
24 fingerprints on the shotgun nor any act by the state to
25 prove who owned the shotgun and who Mr. Jones got it from

1 and anything in reference to the source of the gun.

2 Q. What is number six?

3 A. Number six speaks to the point that there was no
4 witness of the stabbing of these individuals and no
5 indication of who did it.

6 Q. What is number seven?

7 A. Number seven talks about the autopsy report of
8 Patrick Daniels which stated cocaine was found in his
9 blood stream.

10 Q. What is the significance of that?

11 A. It means, one, that Mr. Daniels was a user of
12 cocaine. It also buttresses Mr. Jones' contention that
13 Mr. Daniels had cocaine on the premises and Mr. Jones
14 also indicated that in the surveillance that they
15 observed Mr. Daniels selling cocaine to children.

16 Q. The last two items have to do with things,
17 information you wanted to collect, is that right?

18 A. Yes. I wanted to get a medical report on Norma
19 Norman because I also wanted to see if Norma Norman was
20 using drugs at the time of this scenario. Whether or not
21 she had cocaine in her blood at the same time.

22 Q. Did you consider this case a hopeless case to
23 defend?

24 A. No, I did not.

25 Q. And these items listed here are what you perceived

1 to be problems about the prosecutions case, is that
2 correct?

3 A. That's correct.

4 Q. If you would, look at Exhibit Number 18. Tell us
5 what that is.

6 A. Exhibit 18 is a letter written to my office from
7 John Zimmermann, Assistant District Attorney General
8 dated October 6, 1986 and in reference to James Jones'
9 case that was pending before the Fifth Circuit Court.

10 Q. We are going to talk a little more about it later.
11 Let me ask you now, was this getting close to the point
12 you stopped representing Mr. Jones?

13 A. I believe -- that is a good question. Yes and no.
14 I believe probably within a month of this particular
15 letter I had a conversation with Mr. Jones where he asked
16 me or told me he was going to get another attorney.

17 Q. We will come back to that later.

18 But look at the second paragraph in
19 the letter and read that and tell us what that meant to
20 you.

21 A. Okay. The second paragraph states, you further
22 advised me that two other individuals may have been
23 involved in this matter and that the presence of their
24 clients at the crime scene was probably a result of his
25 religious faith.

1 Q. Now, this is Mr. Zimmermann telling you that you
2 had told him about two other individuals?

3 A. Yes.

4 Q. Do you know what he is referring to their?

5 A. He is referring to Devalle Miller and Sam
6 Blackstock. And in terms of his religious faith, he is
7 referring to my discussions with him about this campaign
8 to rid the black community of drug dealers.

9 Q. Read that next paragraph and tell us -- read it
10 out loud?

11 A. Before this office makes a decision as to how we
12 will proceed in this case, we invite you to submit any
13 relevant information with regard to your client's
14 participation or the participation of any other
15 individual so that we can thoroughly and completely
16 investigate the facts and circumstances of this matter.

17 We will consider any facts that relate to
18 mitigation in making our prosecutorial decision as how to
19 proceed further in this case.

20 I make this offer as we do in all first
21 degree murder cases, as often we gain information through
22 this process which helps us to decide whether to seek the
23 maximum punishment.

24 At any rate, I need this information as
25 soon as you can produce it but certainly not later than

1 November 1, 1986 so that we can properly evaluate it in a
2 timely fashion.

3 It is signed, sincerely, John Zimmermann.

4 Q. Let me ask you to turn to Exhibit Number 27.

5 A. I have it before me.

6 Q. What is that?

7 A. This is a copy of a letter written to James Jones
8 as he was being held in the Criminal Justice Center.

9 It is from my office to him and in
10 reference to this case.

11 Q. Is that your signature?

12 A. Yes.

13 Q. What is the date?

14 A. November 17, 1986.

15 Q. Read the first two paragraphs.

16 A. Dear Mr. Jones. Pursuant to our conversation of
17 November 10, 1986, you have given me notice that you no
18 longer intend to retain my services.

19 As a matter of note I began working on
20 your case as of February 20, 1986. Please find enclosed
21 a copy of the motion for additional mental evaluation,
22 exhibit to that motion and proposed order in that regard.

23 You have instructed me to pursue this
24 motion which was filed, heard and ruled upon prior to
25 your relieving me as your counsel.

1 Q. Now, this comes November 17, little over a month
2 after the letter from Zimmermann to you telling you to
3 produce information that would be helpful in resolving
4 the case?

5 A. Yes.

6 Q. At this point in time you hadn't been able to
7 provide him with the information, with any information in
8 response to that, had you?

9 A. Well, I don't think any additional information. I
10 think we had -- I had met with Mr. Zimmermann and looked
11 at the physical evidence, looked at the state's pictures
12 of the murder scene, crime scene. We reviewed separately
13 our own discovery responses.

14 You know, I basically gave him my theory
15 of the case and that was with my understanding that Sam
16 Blackstock was involved, and he came back to me later on
17 that probably shortly after Mr. Zimmermann's letter, we
18 had another conversation about Sam Blackstock, we can't
19 find him, I think. He said I don't think he exists, I
20 think you are making us spin our wheels.

21 Q. At that point in time you hadn't secured any
22 psychological evaluation to be done on Mr. Jones, had
23 you?

24 A. No. I hadn't secured any. I was in the process
25 of -- there had been some psychological evaluations done.

1 I had obtained that, I believe, from Mr. Koomen or
2 Morgan.

3 Q. You are talking about the psychologist at DeDe
4 Wallace that saw him in the jail, is that right?

5 A. Yes.

6 Q. And if you would then look at Exhibit Number 22.

7 Is this the motion for additional mental
8 evaluation you referred to that you promised Mr. Jones
9 you would pursue and you did?

10 A. Yes. Yes, it is. In fact, it was filed pursuant
11 to the letter. It was indicated he orally gave me the
12 notice that he was going to have another counsel on
13 November 10th of '86. This particular motion appears to
14 have been filed on October 27.

15 Q. Attached to that the third page in this exhibit
16 are some progress notes by Dr. Morgan and Dr. Koomen,
17 right?

18 A. Yes.

19 Q. It is based upon that progress note. You make the
20 motion for additional evaluation.

21 If you would, look at the second full
22 sentence in the motion. It says defendant would
23 respectfully show?

24 A. Yes.

25 Q. All right.

1 A. Defendant will respectfully show he was evaluated
2 on March 4, 1986 by Dr. Leonard Morgan who recommended at
3 that time that defendant be transferred to Middle
4 Tennessee Mental Health Institute for further evaluation.

5 However this was not done.

6 It goes on to say, furthermore defendant
7 will show that he was evaluated by Dr. John Koomen on
8 March 9, 1986 who states in his report that I can't
9 assess his mental state at the time of the crime. The
10 inconclusiveness of these evaluations indicate the
11 further need for evaluation in this regard.

12 Q. So, this is the motion requesting the evaluation
13 that you filed and then you wrote the letter in November
14 and the evaluation took place sometime after that, is
15 that correct?

16 A. Yes.

17 Q. So, did you proceed from your status as his
18 counsel to have changed after that November 17th letter?

19 A. Yes. It changed as of November 10th. I was
20 documenting it for the record and for being clear for the
21 record sake, for my personal file sake, for having some
22 clarity.

23 And in the letter I indicated to him I
24 would follow through on the motion hearing, which I
25 think took place probably before November 10th. I am not

1 sure about that.

2 The motion was granted. And so after the
3 motion is granted, you know, usually the prevailing party
4 attorney will draft an order for the court. I did that.
5 But in this case Mr. Zimmermann also drafted an order. I
6 felt his was not adequate. I felt mine was clear and
7 adequate.

8 So, there was litigation on some advocacy
9 that had to be done in terms of getting the proper order
10 filed and carried out on Mr. Jones' behalf so he could
11 have an appropriate evaluation.

12 Q. From that point in time on you filed nothing
13 further on Mr. Jones' behalf in court and you appeared no
14 further in court on his behalf?

15 A. I recall that basically I was still attorney of
16 record and I was very anxious in having that situation
17 changed. But that didn't happen until later.

18 Q. When did you realize Mr. Barrett had been
19 contacted to represent Mr. Jones?

20 A. I recall having talked to Mr. Jones and also
21 recall him having given me a letter that indicated that
22 some of his friends or some of the people he was
23 connected to have raised some money and were going to
24 hire an attorney of their choosing to take over this
25 case.

1 And I asked him who is that person and
2 when are they going to come on the case? Mr. Jones
3 indicated that Lionel Barrett's office was contacted and
4 that he was going to take the case over.

5 Q. What is your best recollection about when that was
6 in relation say to your November 17th letter and November
7 10th conversation with him when he said he was going to
8 get other counsel?

9 A. It may have been on November 10th he told me that.
10 It may have been shortly thereafter.

11 Q. Do you feel confident it was say within the month
12 of that meeting?

13 A. Yes.

14 Q. Let me ask you this. At this point in time, had
15 you collected any information about prior
16 institutionalization of Mr. Jones either in a
17 correctional system or mental health facilities?

18 A. Yes.

19 Q. What did you collect?

20 A. There was information that was part of the
21 response in discovery to a meeting with Mr. Jones and
22 went over with him that we talked about the charges and
23 the rap sheet there. We went through each aspect.

24 He was able to tell me this applies to me
25 but this is not me, it is another James Jones. There was

1 a bank robbery on there. He said that wasn't me but this
2 one was me. So, we went through that.

3 Q. Look at Exhibit 12, if you would. Are you
4 referring to the documents attached to this discovery
5 response?

6 A. Yes.

7 Q. Other than those documents, did you have any
8 records of Mr. Jones' past institutionalization?

9 A. I don't think I had any other on record. I had a
10 conference, for instance, with Mr. Lewis Trammel who was
11 his probation officer.

12 Q. You didn't have any information on prior
13 information on prior arrests, psychological information?

14 A. I think I had information. I didn't have them in
15 my file at the time.

16 Q. No documents?

17 A. No documents.

18 Q. What was the information you had?

19 A. That he had prior psychological evaluations, he
20 had been institutionalized before, that he had been
21 involved in some other criminal episodes and he had some
22 other convictions.

23 Q. But you didn't have those records?

24 A. No.

25 Q. And other than the people that you have told us

1 about, had you interviewed anyone else in relation to
2 this case?

3 A. There were at least the witnesses I called at his
4 bond hearing. There were people connected with the
5 Southeast Gospel Ministry.

6 Q. Who were they?

7 A. If I could look at my file. Graham Reid, Gail
8 Hughes, Sheila Hughes, Reverend Turner, Miller, Dr.
9 Bukemia.

10 Q. Spell that.

11 A. B-u-k-e-m-i-a.

12 Reverend George Coleman. Brenda Winfield.

13 Q. You talked to those people?

14 A. Yes.

15 Q. Did you call all those people as witnesses at the
16 bond hearing?

17 A. These are persons I subpoenaed. I don't think I
18 put all of them on. I subpoenaed them and had them come.
19 Some of them, I had a chance to talk to and some of them
20 I utilized the subpoena power to have them on hand to
21 talk to them.

22 But these are people that I understood
23 could help me in the investigation of this case.

24 Q. Had you interviewed anyone outside of Nashville?

25 A. I don't think so.

1 Q. Had you interviewed any of Mr. Jones' family?

2 A. Other than his wife, no.

3 Q. Other than his wife. After you learned from Mr.
4 Jones he intended to retain Mr. Barrett, did you see Mr.
5 Barrett and talk to Mr. Barrett about the case?

6 A. I used to see Mr. Barrett quite often. We did a
7 lot of work in the same courtrooms. I would see him
8 maybe every day. And we would pass each other in the
9 hall going from court to court.

10 When I understood Mr. Jones was in the
11 process of retaining Mr. Barrett's office, I saw Lionel
12 in the hall and said -- you know, spoke to him. I said,
13 are you taking the Jones' case? He said yes. We are
14 probably going to take it. We are probably going to take
15 it.

16 And I was telling him, you know, why don't
17 we get together and we can talk about it and I can let
18 you have the file. If there is something you need from
19 me, I am more than willing to give it to you, if you need
20 to talk about it.

21 I also wanted to go on with my life and
22 wanted to officially be relieved of my duties in
23 reference to Mr. Jones' case.

24 So, I guess the first time I mentioned it
25 to Lionel he said, I am not on it yet but I will get with

1 you.

2 We had several brief discussions of that
3 same nature. He was not aggressively like trying to
4 become attorney of record. At the same time I was
5 aggressively trying to be relieved.

6 Q. Did you say you offered the contents of your file
7 to him?

8 A. Yes.

9 Q. Did you say you offered to sit down and talk to
10 him about the case?

11 A. Yes.

12 Q. Did he ever do either?

13 A. No.

14 Q. Now, you say you saw him many times?

15 A. Yes.

16 Q. And describe to us then the nature of this contact
17 you had with him?

18 A. Well, you know, it was like practicing law is like
19 you run into lawyers all the time. It is like you see
20 each other in the hallway. Lionel and I had a good
21 relationship. We play on the same basketball team. We
22 are on first name basis and stuff like that.

23 When I had that case, I understood Lionel
24 was going to be on it, you know, I just tried to
25 communicate to him in an open way, you know. I have a

1 file, I have some interesting things in my file you might
2 want to get that. There were things that were a matter
3 of record that you can get from the clerk's office, there
4 are things that I have that he couldn't get there.

5 I just gave him an open door, open
6 invitation to get that information, to talk with me.

7 I was very interested in getting an order
8 of substituting counsel so that I could close the file as
9 far as I was concerned and let him do this thing.

10 Q. Mr. McAlpin, to bring closure, let me ask you
11 this. Did you ever turn over the contents of your file
12 to Mr. Barrett?

13 A. I thought about that. I know I have testified in
14 this case in state court before to the fact I did but
15 when I looked at my testimony, I was like would you -- I
16 don't really have a firm recollection of turning my file
17 over to him. I think I probably offered it so many times
18 that I thought I did.

19 But my best recollection at this point in
20 time is that that never really happened, even though it
21 could have. The opportunity -- there was nothing
22 standing in the way other than him taking the time and
23 for saying, look, I will come by tomorrow or today.

24 That never took place, that conversation
25 never took place. The ball was in his court and he just

1 didn't shoot it.

2 Q. And finally, did you ever sit down and talk to him
3 about the case?

4 Did you ever give him your theory of the
5 defense or tell him who you talked to or what you thought
6 was going on here?

7 A. We didn't have the opportunity -- I didn't have
8 the opportunity to have that type of conversation with
9 Lionel even though I was ready to and I was willing to.
10 I may have even wanted to.

11 I may have been a little persistent in
12 telling him we need to talk, we need to -- why don't we
13 talk about the case, I will sit down and let you know
14 what I found out.

15 That conversation never took place.
16 Again, the ball was in his court.

17 Q. Let me ask you to look at Exhibit 30 and get you
18 to tell us what this is.

19 A. This is a letter written by Larry Southard,
20 director of forensic services at Middle Tennessee Mental
21 Health Institute written to my office January 21, 1987 in
22 reference to James L. Jones.

23 Q. Without reading the letter, tell us what the
24 letter is about.

25 A. The letter is about information regarding Mr.

1 Jones' arrest and charges against him, any reports,
2 witness statements.

3 Q. Let me interrupt you there for a second. This is
4 a letter from Middle Tennessee Health Institute to Mr.
5 Jones' attorney requesting any information you want to
6 provide to them, right?

7 A. Yes.

8 Q. Look at Exhibit Number 31.

9 A. I have it in front of me.

10 Q. This is your response to that letter, is that
11 right?

12 A. I would say it is my response. It is not
13 necessarily to that letter. That is my response.

14 Q. This letter is dated January 22, 1987?

15 A. Yes. I probably got -- his letter was dated the
16 21st and probably came to my office by the 22nd. I
17 immediately responded.

18 Q. And just to summarize, tell me if I am wrong, this
19 letter is advising him he is Muslim and can't eat pork,
20 he has a special diet?

21 A. Yes.

22 Q. Did you provide any other information to Middle
23 Tennessee Mental Health Institute?

24 A. No.

25 Q. If you would, Mr. McAlpin, look at Exhibit 38.

1 Tell us what this is.

2 A. This is a letter handwritten in Mr. Jones'
3 handwriting dated March 15, 1987.

4 Q. Addressed to whom it may concern. Did it come to
5 you?

6 A. I believe it came to me or either I met him and
7 got it from him personally. Either one of those ways.

8 Q. It was delivered to you?

9 A. Yes.

10 Q. What does it say?

11 A. As of this date, March 15, 1987, I now release
12 Honorable Neal McAlpin of his duties in representing me
13 in the Fifth District Court. With the peace and blessing
14 of Allah forever be with us all. In spirit, James L.
15 Jones, dated March 15, 1987

16 Q. He told you in November, November 10th he was
17 going to get somebody else to represent him but gave you
18 this formal written release in March?

19 A. Yes.

20 Q. Okay.

21 MR. REDICK: Excuse me just a second, Your
22 Honor.

23 THE COURT: All right.

24 Q. Mr. McAlpin, sometime after your involvement in
25 this case your license was suspended, was it not?

1 A. That's correct.

2 Q. During that entire period of time that you
3 represented Mr. Jones, you were an active member,
4 practicing member of the bar here in Nashville?

5 A. Yes.

6 MR. REDICK: Your Honor, that is all I
7 have.

8 THE COURT: Let's take a brief break and
9 then we will come back and have some cross-examination.

10 (Whereupon, the Court was in recess.)

11 MR. MACLEAN: Your Honor, I would like to
12 talk about scheduling. Mr. Barrett is here and is our
13 next witness. I don't know if we are going to take a
14 break.

15 THE COURT: We are going to take a lunch
16 break. We had a long day Friday in the courtroom and
17 essentially blew out Mr. Tummel's court reporting
18 computer if not his finger tips.

19 It was a pleasant reminder to me I may be
20 willing to go like the equivalent of the Energy Bunny
21 but it is different when I start imposing that on others.

22 We will be taking a lunch break. It
23 wouldn't be overly leisurely but we will have one. I
24 know Mr. Barrett has other things to do as all of us do.

25 So, I am going to be somewhat flexible.

1 I anticipate about an hour lunch break. I think it is
2 helpful if Mr. Baker at least begins his
3 cross-examination of Mr. McAlpin, depending on the
4 length.

5 Mr. Baker, I am not trying to tell you
6 what the length should be. Depending on the length, we
7 will break or not break and then Mr. Barrett can take his
8 lunch break at the same time and we will put him on.

9 Does that sound reasonable?

10 MR. BAKER: Yes, Your Honor.

11 THE COURT: Any problem with that, Mr.
12 MacLean?

13 MR. MACLEAN: I guess what you're saying
14 is that after Mr. McAlpin is finished we will have a
15 lunch break and then pick up.

16 THE COURT: That is what I anticipate
17 unless somebody has some objection, in case they have a
18 witness coming from out of town that has to go on this
19 afternoon.

20 I am not going to tell you we will break
21 for lunch every day. If we start getting close on time
22 as we approach the end of the week, we will just have to
23 see. I do want to at least start off in a civilized
24 fashion.

25 Mr. Baker, are you ready?

1 MR. BAKER: Before I begin, let me
2 introduce Don Ungurait. He originally was with me and
3 had a foot injury that put him out of service for a
4 couple days.

5 THE COURT: Under the circumstances, you
6 are relieved of all your rise duties and customary
7 lawyer-like conduct. I hope it wasn't a law related
8 injury.

9 I had a partner that broke his foot by
10 tripping over Martindale Hubble once. I never thought of
11 law as being all that risky. Occasionally you get those
12 problems.

13 Go ahead, Mr. Baker.
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EXAMINATION OF NEAL MCALPIN

BY MR. BAKER:

Q. Mr. McAlpin, are you ready?

A. Yes.

Q. You testified the petitioner's first story to you about this crime was the Sam Blackstock story, correct?

A. Yes.

Q. That is what he told you and you explained that on your direct examination?

A. That's correct.

Q. And after that you reported that basic story to General Zimmermann, correct?

A. Yes.

Q. And General Zimmermann undertook to see if he could locate a Sam Blackstock, right?

A. That's right.

Q. He reported back to you he could find nobody by that name, correct?

A. That's correct.

Q. You took that to the petitioner, Mr. Jones, correct?

A. Exactly.

Q. You confronted him with that problem?

A. Yes.

1 Q. It was at that point he said he had -- I believe
2 using your words -- had created that story?

3 A. What is your question?

4 Q. It was your words I believe that you said Mr.
5 Jones had created that story. He told you he had created
6 that story?

7 A. Sam Blackstock?

8 Q. Correct.

9 A. It is my understanding he did create that story
10 and also my understanding that I am not exactly sure at
11 what point. I am not sure if my confrontation of him
12 caused him to come clean at that time or he came clean on
13 his own.

14 Q. That is when he came clean to you, is that
15 right?

16 MR. REDICK: He answered the question.

17 A. I can't say my confrontation with Zimmermann's
18 investigation not finding Sam Blackstock, my informing my
19 client of that information is the point in time which he
20 gave me a different version. I can't say that today.

21 But some point after that I did get a
22 different version. I can't say exactly when.

23 Q. But it was after you had approached him about what
24 Mr. Zimmermann told you?

25 A. Yes, that is the sequence.

1 Q. And he came back -- it may not be that same day --
2 but he came back at some point and gave you a second
3 story?

4 A. Yes.

5 Q. That second story was the story about Beard, Boyd
6 and this ministry group, correct?

7 A. No. That was always a part of the scenario from
8 the very beginning. That was not the second story.

9 Q. His second story is basically he could give you or
10 tell you about Mr. Beard, Mr. Boyd and others, he could
11 tell you that he went to Mr. Daniels' house and he could
12 tell you about the gun, with the taping of the victims
13 but he couldn't tell you anything else until after he was
14 in the car with Mr. Miller going home?

15 A. The difference between the two stories is one
16 element. The first story included Sam Blackstock. The
17 second one doesn't.

18 Q. But that first story he was saying he had left the
19 house and Sam Blackstock was still there, correct?

20 A. Yes.

21 Q. Okay. This second story he was telling you, he
22 was there and actually taping up the victims, correct?

23 A. That was consistent with both stories.

24 Q. He had that in both stories?

25 A. I think what distinguishes the two stories, that

1 Sam Blackstock was in the first one and he wasn't in the
2 second one.

3 The other distinguishing factor, I recall,
- 4 he had taken some kind of mind altering substance. He
5 didn't say that in the first story. He did tell me about
6 that the second time.

7 Q. You said earlier he had taken some sort of
8 hallucinogenic like LSD?

9 A. That was in the second scenario he told me.

10 Q. He had also told you that his purpose for going
11 over there was to rid the neighborhood of drugs,
12 correct?

13 A. There was a list of objectives. One was to scare
14 drug dealers out of the business.

15 Q. Didn't you find it a little peculiar he admits to
16 using drugs around the time of the crime and at the same
17 time he is there to help eradicate drugs?

18 A. I thought it very peculiar. I called him on it.
19 I said that is not consistent. It is still not
20 consistent for me.

21 He explained it that basically he was
22 involved in a holy war and that their campaign -- of
23 being the Southeastern Gospel Ministry campaign -- was a
24 righteous one and it was a necessary one and that it
25 took -- he considered himself a foot soldier in this

1 scenario. He considered himself on the front line. He
2 was preparing himself as a warrior to do battle. That is
3 how he prepared himself.

4 Q. He told you he considered himself a warrior,
5 correct?

6 A. Yes.

7 Q. Engaged in warfare?

8 A. Exactly.

9 Q. Now, with regard to the stories he told you about
10 what happened during your investigation, were you able to
11 find any evidence to corroborate his story?

12 A. Yes. My discussion with the people that are
13 involved with the Southeastern Gospel Ministry, some of
14 the things they said and some of the things they were
15 reluctant to say indicated to me they had some
16 involvement in creating this campaign, they had some
17 involvement in the mission in which he was sent and he
18 was being directed and he was being supervised by them.
19 I thought this case was very different --

20 Q. Those were your speculations. You didn't have
21 direct proof of any of that, did you, other than Mr.
22 Jones' statements?

23 A. Well, I had people being very evasive.

24 Q. You thought were being evasive. You had no direct
25 evidence these men were involved in some sort of warrior

1 campaign?

2 A. They were evasive to me in that question in that
3 regard.

4 Q. Would you base your opinion on that they were
5 evasive?

6 A. They were evasive, reluctant and sometimes very
7 nervous. They were very negative in responding to those
8 type questions. It gave credence to his story. It gave
9 me something to work with and some corroboration. It
10 gave me corroboration.

11 Q. Other than Mr. Jones, you found nothing else other
12 than what you told us.

13 MR. REDICK: He just answered the question
14 of what he found.

15 THE COURT: Go ahead and answer and then
16 we will move on.

17 Q. Other than your concerns about the way these
18 people appeared to you and other than Mr. Jones --

19 MR. REDICK: Your Honor, he is starting to
20 testify. He is characterizing his testimony.

21 THE COURT: He is trying to see if he has
22 a complete answer.

23 Mr. McAlpin, the question on the table
24 is -- the question is, is there anything in addition
25 to your conversations with Mr. Jones and your

1 credibility determinations of the individuals that
2 appear to be associated with the Southeastern Gospel
3 Ministry; was there any other evidence supporting Mr.
4 Jones' story?

5 Is that right, Mr. Baker? Is that your
6 question?

7 MR. BAKER: Yes, Your Honor.

8 THE COURT: Answer this one and we will
9 move on.

10 A. Okay. I would answer that question by saying that
11 the preliminary information I got about this whole
12 scenario came from Mr. Jones.

13 I will also say that I was aware that
14 Allen Boyd was involved in marshal arts from knowing him
15 in the community, that the group Southeastern Gospel
16 Ministry -- when I was getting this information about
17 this group and this set up, I was aware of a childhood
18 friend of mine by the name of Adina Smith, the daughter
19 of Kelly Smith -- he was a minister, pastor. And as she
20 grow up and we all did, she married a guy who was a
21 doctor in Meharry and lived in my neighborhood. They
22 used to have meetings at their house. It was a group of
23 young black Christians.

24 I was able in my discussions with Mr.
25 Jones to tie that particular group, and now it had a

1 name, and the name was Southeastern Gospel Ministry.

2 So, I had that corroboration that the
3 group existed and I knew they existed but I never knew of
4 their formal name.

5 But Adina Smith was involved in that
6 particular group.

7 I knew that particular group was young,
8 they were black and very Christian in their orientation
9 and some people were calling them radical in their
10 approach. They were creating a ministry that was
11 relevant to younger people as opposed to their parents'
12 generation, that type church, but one that appealed to
13 the issues and themes of young adults.

14 I was able to tie those two -- my
15 understanding of that prior to this case with Mr. Jones
16 and then once I was involved with it, tying those two
17 things together. They did match up.

18 The other corroboration that I did have
19 was just a real obvious scenario where I get a call from
20 Allen Boyd to go talk to James Jones about representing
21 him and then the next day calling Mr. Boyd as a witness
22 for character as his employer and supervisor and give him
23 basic lobs, do you know Mr. Jones?

24 Well, I, I, I think I recognize him. That
25 kind of response.

1 It is obvious, obvious deception and
2 obvious attempts to distance himself.

3 So, that type of action speaks volumes
4 about giving more credence to the scenario I was given by
5 my client.

6 Q. So, basically it was the demeanor of the witnesses
7 that you knew the Southeastern Gospel organization
8 existed and what Mr. Jones told you.

9 Is that summarizing what you basically
10 told us?

11 A. Yes. My discussion with other witnesses.

12 THE COURT: Okay. Next question.

13 Q. Now, you also discussed a little bit about the
14 lack of fingerprints on a knife in this case.

15 Do you recall testifying about that?

16 A. Yes.

17 Q. Of course the results in this test indicates that
18 there were no latent prints lifted, correct?

19 A. That's correct.

20 Q. That means they were unable to pull anybody's
21 prints from that evidence, correct?

22 A. Correct.

23 Q. And are you aware that there is some evidence that
24 gloves may have been worn during these crimes?

25 A. Yes.

1 Q. And that can explain why there are no fingerprints
2 on the evidence?

3 A. It sure could.

4 Q. You mentioned also a Dr. Morgan and Koomen?

5 A. Yes.

6 Q. Do you know how they became involved with Mr.
7 Jones initially?

8 A. I believe they were connected probably through the
9 Sheriff's Department and probably through the criminal
10 justice facilities.

11 Q. You didn't request their services?

12 A. No, I did not.

13 Q. And you don't have any -- you don't know for sure
14 how they became involved?

15 A. I think they may have just been systematically
16 involved as somebody that was under arrest for a capital
17 crime.

18 Q. You also talked about around November of 1986 you
19 became aware that the petitioner was seeking another
20 attorney?

21 A. Yes. My recollection of that is that some persons
22 who were affiliated with him had raised, in essence, a
23 legal defense fund but their stipulation was that the
24 attorney of their choosing would take over the case.

25 Q. You would be conveniently removed, is that your

1 understanding?

2 A. That was my understanding as of November, 1986.

3 Q. I will hand you Exhibit 5 and ask you to turn
4 to the last page. It has a number at the bottom, number
5 92?

6 A. I have it.

7 Q. Do you recognize that letter?

8 A. Yes, I do.

9 Q. Is that signed by James Jones?

10 A. Yes.

11 Q. Is that a letter that you received from him?

12 A. This is a letter. I received several letters.

13 Q. What is he telling you in there?

14 A. He opens with Salaam Alaikum. He starts by saying
15 he hopes peace be with you, my beloved brother. I
16 basically have good news and bad news. He says that
17 Allah answered his troubled mind by sending him people of
18 concern. They have raised funds to obtain one of their
19 choice to bring me much closer to freedom.

20 Q. Did he send you this letter after you had told
21 him about your conversation with Mr. Zimmermann or
22 before?

23 A. My recollection is this is after.

24 Q. This is after you told him about your conversation
25 with Mr. Zimmermann and also after he had told you that

1 the Sam Blackstock story wasn't true?

2 A. I really can't pin that down.

3 Q. In this letter Jones says, quote, I know that you
4 can see that much more needs to be added to obtain my
5 freedom.

6 Do you see that statement?

7 A. What paragraph are you on?

8 Q. Second paragraph, last sentence?

9 A. Yes, I see that.

10 Q. And paragraph above that he says, quote, Allah has
11 answered my troubled mind. He has sent to me people of
12 concern and that they have raised funds to obtain one of
13 their choice to bring me just that much closer to
14 freedom?

15 A. Yes.

16 Q. And if you look down at the third paragraph it
17 says, quote, I need reinforcements which I feel Allah has
18 sent me?

19 A. Yes, I see that.

20 Q. Look down at the last paragraph. Quote, please
21 understand this is my life that everyone is talking about
22 and I must find that way to protect?

23 A. Yes, I see that. Last paragraph?

24 Q. Yes.

25 A. To understand this is any life everybody is

1 talking about and I must find that way to protect it.

2 That is what I see.

3 Q. And then just below that he says, quote, I need to
4 be freed?

5 A. Yes.

6 Q. Would you say this letter is an expression of his
7 concern that he be free?

8 A. I would say that this letter expresses many
9 things.

10 Q. Would it express that, that he wants to be free?

11 A. I think he says that.

12 Q. If I could also hand you what has been marked
13 Defendant's Exhibit 4.

14 A. I have it before me.

15 Q. Is that one of your notes?

16 A. Yes. This is in my handwriting.

17 Q. For the record, I note that is a note out of post
18 conviction Exhibit 42.

19 If you will look, there is a circled part
20 in that note and it says, defendant snapped, put in hole,
21 padded cell?

22 A. Yes.

23 Q. Is that something he told you?

24 A. I am thinking that this is based upon my
25 conversations with him.

1 Q. Now, at the post conviction hearing, you testified
2 about that note and you stated that Jones had told you
3 that he had lost his temper, that something had upset him
4 and you took that to mean that something upset him and he
5 reacted, not that it was some evidence of a mental
6 illness or a disease. That was your testimony at the
7 post conviction.

8 Is that still your memory today?

9 A. About in reference to this note?

10 MR. REDICK: I am not sure that I
11 understand. Is that his memory?

12 THE COURT: Let's rephrase the question.

13 MR. MACLEAN: I think he should be able to
14 review his testimony if he is being asked about it.

15 Q. Would you like to see your testimony on it?

16 A. Yes. The context may be relevant to my response.

17 Q. This is pages 77 to 81 in your post conviction
18 testimony.

19 A. I have it before me. Starting at page 77?

20 I have read the testimony. It is about
21 the attorneys.

22 Q. Is it your memory today based upon having reviewed
23 your prior testimony that Jones had told you he had lost
24 his temper?

25 A. This note is probably just really trying to

1 document things as I hear them and trying to put them in
2 some kind of box so I can understand what was going on.
3 I wasn't there at the night court.

4 I was trying to document based upon
5 talking to Mr. Jones what the scenario was about. This
6 appears to be something where he talks about his wife was
7 treated disrespectfully by some of the police there and
8 that possibly he had some kind of reaction to that.

9 Q. I will refer you to page 79 of that testimony and
10 I will read on line seven.

11 The witness. Quote. To the best of my
12 recollection this note comprises me -- there was some
13 discussion, I am pretty sure there is, relating to when
14 it says night court, I am thinking he was arrested and
15 taken and booked and taken through the original procedure
16 once one is arrested.

17 I think this reference to that there was
18 some -- his temper flared as a reaction to that the
19 police officers also put him in a padded cell.

20 So, based upon that testimony is it your
21 memory today that as best you can recall from what Jones
22 told you was that he lost his temper over something that
23 happened at the jail?

24 A. I can't really say that. This particular note,
25 I don't know, it may have something on the page before

1 to put it together for me. Because -- I have my file
2 here.

3 Maybe I can look and see if I can pull the
4 note or page before that.

5 Q. Do you think your testimony or your memory about
6 this was probably better at the post conviction
7 proceeding than it is here today?

8 A. Well, if I look at what I said at the post
9 conviction it seems like I was really sort of speculating
10 even then. You know, it is a brief note in a series of
11 notes. It is in the context of an entire interview.

12 What happened at this particular aspect is
13 maybe a small part of the whole scenario. Maybe I have
14 more notes that could jog my memory.

15 I will state for the record that I think
16 my notes in this particular scenario are very brief and I
17 was trying to understand from the eyes' experience of my
18 client what happened. I wasn't there.

19 Q. Let me direct you to page 80 and 81 of your post
20 conviction testimony. See if this helps refresh your
21 memory.

22 Question by Mr. Zimmermann. According to
23 your notes you got written down, defendant snapped. Did
24 you take that to mean the defendant was suffering from a
25 mental disease or some significant psychological event

1 that occurred there in night court?

2 Answer. No. I took that to mean
3 something upset him and he reacted in an upset fashion.

4 Does that refresh your memory in any way
5 about your conversation with Mr. Jones about that
6 matter?

7 A. No. I mean, you know my response to Mr.
8 Zimmermann was in reference to a note. I am trying to
9 interpret what the note meant. My recollection was based
10 upon my discussion with him.

11 I can't tell you clearly as succinctly now
12 and I couldn't say it then. It was a report of a
13 situation that he understood because he experienced it
14 but I was trying to understand and take with a sequence
15 of notes.

16 THE COURT: I think this is a good time
17 for us to break. One appears to be tiring and drifting.

18 MR. BAKER: I may not have that much
19 longer, if you want to try it.

20 THE COURT: All right. Give it a while
21 then.

22 Q. Referring you back to I think Defendant's Exhibit
23 5.

24 I was referring you back to the exhibit I
25 have mark post conviction Exhibit 55. I believe it is

1 our Exhibit 4 or 5. I don't recall.

2 MR. MACLEAN: I think it is Exhibit 3. Is
3 that the correspondence you are talking about?

4 MR. BAKER: Yes.

5 A. Mine is marked five.

6 Q. If I can refer you back to that note on that
7 exhibit and refer you to what is listed as page 87.

8 Do you see page 87 at the bottom?

9 A. I have it before me.

10 Q. That is part of a letter that Mr. Jones sent you,
11 correct?

12 A. Let me see the beginning of it.

13 In answer to your question, page 86 of
14 Defendant's Exhibit 5 is actually a selection of writings
15 by Mr. Jones. I do recall receiving several writings.
16 This appears to be one of them, maybe three of them.

17 Q. If I can refer you to the last paragraph on page
18 87.

19 A. It is not a letter to me but it is an article or a
20 call that he authored and gave me a copy of.

21 Q. The last paragraph of page 87. Do you see that?

22 A. Starting with this drug dealer?

23 Q. Correct. It says right there, quote, this drug
24 dealer that died was the terrorists, he was the robber,
25 he was the killer?

1 recollection is that the file was either picked up or
2 sent to his office or made available to him and it was
3 returned to me.

4 So, you're saying now that testimony at
5 post conviction hearing was not true?

6 A. I am saying I have another recollection at this
7 time. I feel strongly that my recollection, based upon
8 my testimony today, is correct. I also say that I
9 thought the file -- I found my original file yesterday.
10 It had nothing to do with this case. But I had it in my
11 archives and found it yesterday and had a chance to go
12 through it.

13 I don't have any documentation showing
14 when, if it was given to Mr. Barrett's office, or when it
15 transpired or any letter to that regard. That would have
16 been a part of my procedures.

17 Q. Mr. McAlpin, what is your current relationship
18 with Mr. Jones?

19 A. Mr. current relationship with Mr. Jones?

20 I am a witness in this case. That is my
21 current relationship.

22 Q. Have you had any contact with him other than in
23 this courtroom today?

24 A. I have had contact with him. I think I saw him
25 four or five years ago. Probably I was visiting someone

1 A. I see that.

2 Q. And this was part of a writing that Mr. Jones had
3 written, correct?

4 A. This appears to be exactly that.

5 Q. Mr. McAlpin, you had said that you do not recall
6 Mr. Barrett receiving your file, correct?

7 Do you remember that testimony?

8 A. Yes. I am thinking that, you know, I think I had
9 different thoughts on that. Usually there is some kind
10 of -- something in my file or some kind of letter or
11 evidence that would document when that would have
12 occurred.

13 My recollection at this point in time is
14 that the file was offered. My willingness to talk about
15 the case was made known. But those two things, neither
16 one of them were followed up by Mr. Barrett's office.

17 I will say that Mr. Barrett is a very,
18 very busy -- and very busy attorney and so I don't think
19 he ever got around to it. For whatever reason, he didn't
20 take advantage of that situation.

21 Q. So, if he testified at the post conviction hearing
22 that, quote, my personal recollection is that at some
23 point in time -- and I can't say at what point -- but
24 some point he did request the opportunity to review my
25 file and I made that -- I had no problem with that and my

1 else at River Bend. I think I saw him at River Bend.

2 Q. You have not seen him at River Bend say today?

3 A. I am thinking.

4 Q. You didn't see him last week or week before or
5 anything like that?

6 A. No.

7 MR. BAKER: That is all, Your Honor.

8 THE COURT: I have one quick question.

9 Mr. McAlpin, are you currently licensed to
10 practice law?

11 A. I am apparently licensed -- I have a suspension
12 that has not been removed so I am not practicing at this
13 time.

14 THE COURT: You are currently under
15 suspension?

16 A. Yes.

17 THE COURT: All right. Any redirect?

18 MR. REDICK: I don't think so, Your Honor.

19 THE COURT: You may step down then.

20 A. Please the Court, I would like to know as a
21 witness if I could be released in this case?

22 THE COURT: Any reason why this man --

23 MR. REDICK: Not as far as we are
24 concerned, Your Honor.

25 THE COURT: Mr. Baker.

1 MR. BAKER: No, that is fine.

2 THE COURT: You are done then.

3 A. Thank you, Your Honor.

4 THE COURT: You may step down. Thank you
5 for coming.

6 One other thing before we break. I have
7 been handed four copies of depositions of Mr. Boyd and
8 Mr. Beard and Mr. Glanton. I am not exactly sure where
9 that came from.

10 I am not exactly sure why I have four
11 copies other than they were handed to my staff and then
12 handed to me. I don't know who gave them to me.

13 Has someone provided them to the Court for
14 them to be filed?

15 MR. MACLEAN: Your Honor, that may have
16 been my secretary's fault. I asked they be sent over
17 here today.

18 She may have misunderstood my
19 instructions. I believe that may be the case.

20 THE COURT: All right. We are here in
21 front of Mr. Baker so he doesn't have any questions.

22 I will give them to you. I thought that
23 might be a possibility.

24 MR. MACLEAN: Thank you.

25 THE COURT: We will break for lunch and

1 come back at 1:35.

2 (Whereupon, the Court was in recess.)

3 THE COURT: Let's call our next witness.

4 MR. MACLEAN: Mr. Barrett.

5 THE COURT: Mr. Barrett, come around and
6 raise your right hand, please, sir.

7 (Whereupon, the witness was duly sworn.)

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EXAMINATION OF LIONEL BARRETT

BY MR. MACLEAN:

Q. You are Mr. Lionel Barrett?

A. That's correct.

Q. You have been a lawyer practicing in Nashville for a number of years, correct?

A. Yes, sir.

Q. And you are principally a criminal defense lawyer?

A. That is correct.

Q. And you have handled a number of death penalty cases in the past?

A. Yes, I have.

Q. And you represented James Lee Jones at his murder trial in 1987, correct?

A. That's correct, sir.

Q. Sometimes I refer to him as Abu-Ali, the current name I know him by.

You took over that case from Neal McAlpin, correct?

A. That's correct.

Q. Your co-counsel was Sumter Camp?

A. That's correct.

Q. Now, Sumter Camp began working for you I believe in October of 1986?

A. That sounds approximately correct.

1 Q. And as I understand, he was basically a salaried
2 employee in your office?

3 A. That is right.

4 Q. But he also had an arrangement with you where he
5 could retain some fees from work he might generate
6 himself?

7 A. I am sure he probably did, sir.

8 Q. Now, in the post conviction trial, do you remember
9 testifying in that trial back in 1993?

10 A. I do remember testifying.

11 Q. Do you remember you testified then that you can't
12 remember how the work on this case was divided between
13 you and Mr. Camp?

14 A. I think that is a fair statement, yes, sir.

15 Q. But you said that Sumter Camp's job during the
16 trial was primarily to deal with the client during the
17 trial so you could do other things. Is that how it
18 worked?

19 A. I think that was certainly one of the major rolls
20 he had during the trial itself.

21 Q. And you were the one primarily responsible for the
22 trial?

23 A. Yes, sir.

24 Q. You were the one primarily responsible for the
25 handling of the case?

1 A. That's correct.

2 Q. And in the post conviction trial, you testified
3 you couldn't remember whether Mr. Camp was present during
4 any meetings you had with any witnesses or with the
5 client, is that correct?

6 A. I believe so, yes.

7 Q. And in the post conviction hearing you testified
8 your file contains all the work that was done by Sumter
9 Camp?

10 A. As far as I know, that is correct, sir.

11 Q. Now, Mr. Ed Swinger, he was a law clerk in your
12 office?

13 A. Yes, he was.

14 Q. He would do what he was asked to do basically?

15 A. Yes.

16 Q. And then in the post conviction hearing you
17 estimated he may have spent one to two hours on this
18 case?

19 A. I don't recall that testimony but if I said that
20 certainly that is correct.

21 Q. And those were the people in your office who
22 worked on the case, yourself, Mr. Camp and one or two
23 hours for Mr. Swinger, is that correct?

24 A. Those would be the ones, that is right.

25 Q. Let me ask you about the question of the nature of

1 criminal law practice in criminal court.

2 Judge Kurtz was the judge in what part was
3 it that you recall?

4 A. He was in the Fifth Circuit Court. He was
5 somewhat an auxiliary criminal court judge. He was not a
6 criminal court judge but handled quite a substantial
7 number of criminal court case.

8 Q. During that time his entire docket was criminal?

9 A. I think that year it was.

10 Q. Because there had been such an overflow from the
11 criminal courts that they needed someone full-time?

12 A. That's correct.

13 Q. During that time I believe Mr. Zimmermann and Mr.
14 Barnard and a couple others were the team that are from
15 the prosecutor's office that practice in that court
16 regularly?

17 A. That's correct.

18 Q. They as a team, there would be maybe three or four
19 members of the team, is that correct?

20 A. There would normally in a given case be more than
21 two. There may have been three or four assigned to the
22 courtroom itself.

23 Q. And they would be there almost on a daily basis?

24 A. Yes.

25 Q. That team would practice exclusively in front of

1 Judge Kurtz, is that right?

2 A. I would say probably 90 percent of their cases
3 would be before the judge they were assigned to.

4 Q. And you would be over in the courthouse not
5 necessarily in part five but you would be in the
6 courthouse regularly, correct?

7 A. Correct.

8 Q. You were one of the few private practicing
9 criminal defense lawyers that would be over there on a
10 regular basis, is that correct?

11 A. Well I am not certain of the characterization of
12 few but there were not a tremendous number of attorneys
13 there on a regular basis. But I would say so.

14 Q. Is it fair to say that was sort of a small world
15 over there of prosecutors and criminal defense lawyers
16 that regularly appeared in front of the same judges on a
17 daily or weekly basis?

18 A. That is probably a fair characterization.

19 Q. Now, you turned over your entire file on the James
20 Jones' matter to the post conviction counsel for copying,
21 is that correct?

22 A. That's right.

23 Q. And you kept no time records on this case?

24 A. That is true.

25 Q. Do you have a binder in front of you? There are

1 two binders.

2 Will you look at Exhibit Number 74 which
3 is in the second volume.

4 A. Yes, sir.

5 Q. Those are handwritten notes. This is really a
6 collective exhibit. The first part of the exhibit is a
7 collection of handwritten notes?

8 A. Yes.

9 Q. All the way up to the affidavit. So, I am asking
10 you to look at those handwritten notes up to the
11 beginning of the affidavit.

12 MR. BAKER: What Exhibit Number is that?

13 MR. MACLEAN: Exhibit Number 74.

14 Q. Do you see those?

15 A. Yes, I do.

16 Q. Now, if you go through the first four pages of
17 those notes are those your handwritten notes?

18 A. That's correct.

19 Q. And then the next page is a handwritten note from
20 James Jones to you, is that correct, with a list of
21 names?

22 A. Yes.

23 Q. And next page after that are some of your
24 handwritten notes?

25 A. That's right.

1 Q. And remaining notes are your handwritten notes?

2 A. That's correct.

3 Q. Now, I believe that your handwritten notes here
4 are all the notes that you took in this case before the
5 trial started, is that correct?

6 A. As far as I know, yes, that is true.

7 Q. Now, to the best of your recollection you never
8 acquired the file from Neal McAlpin or any of his notes
9 in that case?

10 A. That is apparently correct. I know I have spoken
11 to you, and that file doesn't appear in the records I
12 turned over to you. I must assume that is correct.

13 Q. And you never acquired Neal McAlpin's discovery
14 requests he made to the state in this case?

15 A. That's correct.

16 Q. Or the state's responses to those requests?

17 A. That's correct.

18 Q. Now, when you took over this case, you knew that
19 James Jones was indigent?

20 A. Well, I am not certain at the time I got involved
21 in the case I knew that he -- he was indigent. I
22 certainly knew he didn't appear to be wealthy.

23 I think Gail Hughes stated there could be
24 a fee paid, probably not all of it be his money,
25 certainly.

1 Q. And before trial you never moved to have him
2 declared indigent, did you?

3 A. I did not.

4 Q. And it became apparent to you during the course of
5 the case that if you were to be paid a fee you would have
6 to be paid from some outside source, not the client
7 himself?

8 A. Yes, that is true.

9 Q. And because James Jones was never declared
10 indigent, you were not in a position to ask the court for
11 funds to hire expert assistance of any kind, correct?

12 A. Yes, we did not do that.

13 Q. And you did not hire or use an investigator in
14 this case?

15 A. That is true.

16 Q. And you did not hire or use a psychiatrist or
17 psychologist in this case?

18 A. That's correct.

19 Q. And you did not hire or use a mitigation expert in
20 this case?

21 A. That is true.

22 Q. Or jury consultant or any other kind of expert?

23 A. That is true.

24 Q. Now, except for the fact that Mr. Camp attended
25 the trial with you, you cannot remember what he did on

1 the case, can you?

2 A. I at this time have no independent recollection of
3 what Mr. Camp did.

4 Q. And you have no memory of sitting down with Neal
5 McAlpin to talk to him about the case?

6 A. I believe Mr. McAlpin and I had some limited
7 conversations either by phone or in passing at the
8 courthouse.

9 I did not have any memory of any lengthy
10 meetings at my office or his office with him.

11 Q. When you became involved in the case and started
12 working on the case, the case was already set for trial,
13 correct?

14 A. I will accept your characterization. I do not
15 recall that. It very well may have been.

16 Q. But you knew you had a fairly short period of time
17 to prepare this case for trial?

18 A. I assumed that is correct from the discussions
19 that you and I have had. I believe that would be an
20 accurate statement.

21 Q. And you never asked the court for a continuance
22 for additional time to prepare the case for trial?

23 A. I don't believe I did, sir.

24 Q. Now, in the post conviction hearing, I believe you
25 testified that James Jones never specifically recalled,

1 at least to you, stabbing either of the victims in this
2 case.

3 Is that correct?

4 A. That is my memory.

5 Q. Mr. Barrett, did you ever look at the crime
6 scene?

7 A. I did not.

8 Q. Did you ever look at the physical evidence?

9 A. I do not think I did, sir.

10 Q. So, you never looked at the pants or the coat or
11 any of the other clothes that were seized from James
12 Jones' apartment?

13 A. Not prior to trial.

14 Q. Your files do include a report from Opportunity
15 House, the halfway house where Mr. Jones stayed for a few
16 weeks when he first came to Nashville, correct?

17 A. Yes.

18 Q. And your files also include the file you obtained
19 from MTMHI a couple weeks before the trial, correct?

20 A. That's correct.

21 Q. But your files do not include any other records
22 from James Jones' past, do they?

23 A. I don't believe they do.

24 Q. Did you make any effort to obtain any files or
25 other records from Abu-Ali's past, James Jones' past?

1 A. No, I did not.

2 Q. Now, in this case two prior convictions were used
3 as aggravating circumstances to support the death
4 penalty, '92 murder conviction and the 1970 assault
5 matter.

6 Did you ever obtain the court files or any
7 other documents relating to these prior convictions?

8 A. I did not.

9 Q. Did you ever make any effort to obtain the court
10 files or any other documents relating to these
11 convictions?

12 A. No, sir.

13 Q. Did you talk to anyone about the prior convictions
14 besides perhaps James Jones himself?

15 A. Other than the district attorney, Mr. Zimmermann.

16 Q. Did you talk to anybody else besides the district
17 attorney?

18 A. Not prior to trial.

19 Q. Did you make any effort to determine whether
20 either of these convictions could be set aside or
21 expunged?

22 A. I did not.

23 Q. Were you ever aware of the fact that James Jones
24 had received different psychological diagnoses in the
25 past?

1 A. Other than at Opportunity House's report at the
2 time of the trial. So I have seen these since the
3 proceedings began.

4 But at the time, I didn't, no.

5 Q. Were you ever aware of the fact that James Jones
6 had been prescribed anti-psychotic medication in the
7 past?

8 A. Not unless Mr. Jones himself told me that. I do
9 not have any memory of his having done that.

10 Q. Were you ever aware that there were reports in
11 James Jones' prior institutional records that he had
12 suffered severe physical abuse when he was a child at the
13 hands of his father?

14 A. No, sir.

15 Q. Now, it did appear to you James Jones had no
16 relationship or support from his parents at the time when
17 you were representing many him, is that right?

18 A. That is true.

19 Q. Before the trial began, did you ever talk to
20 anyone at MTMHI about their evaluation of James Jones?

21 A. I am not certain. I may have spoken to Dr.
22 Marshall, possibly Dr. Craddock.

23 I do not have an independent memory of
24 it.

25 Q. I believe you are -- you don't have an independent

1 memory of it?

2 A. I do not.

3 Q. Okay. Now, you know who Dr. Harlan is, the
4 medical examiner?

5 A. That's correct.

6 Q. He was the medical examiner that testified in this
7 case, correct?

8 A. That's correct.

9 Q. And in the post conviction proceeding you
10 testified that normally you would speak with Dr.
11 Harlan quite often but in this case you don't have
12 any notes reflecting you spoke with him in this case,
13 correct?

14 A. I assume that is correct, yes.

15 Q. You have no memory of speaking with Dr. Harlan,
16 the medical examiner, in this case?

17 A. I don't have memory of it.

18 Q. You never talked to any of the police that
19 investigated this offense, did you, before trial?

20 A. I do not recall that, no.

21 Q. Except for Allen Boyd, you never talked to anyone
22 who was listed on the indictment in this case?

23 A. I don't have the indictment in front of me. I
24 will accept --

25 Q. We will go over the indictment in a little

1 while.

2 You never investigated the background
3 of Devalle Miller the co-defendant in the case, did
4 you?

5 A. Other than conversations I recall with the
6 District Attorney's Office, I believe Devalle Miller --
7 and I thought that there was some investigation,
8 although it probably dealt more with items that came
9 through the possible conversations with the District
10 Attorney office.

11 I certainly gave a lot of thought to the
12 testimony of Devalle Miller. But as far as a background
13 investigation, I don't recall that.

14 Q. And you never investigated the background of
15 either one of the victims, Patrick Daniels or Norma
16 Norman, is that correct?

17 A. I think that certainly we had some idea as to
18 their background.

19 As far as going out and doing a background
20 investigation, I did not.

21 Q. This may be a little confusing. There are two tab
22 14s here. Will you look at the second tab 14.

23 MR. MACLEAN: Your Honor, we inserted that
24 this morning.

25 THE COURT: What book?

1 MR. MACLEAN: First book, tab 14. It is
2 the second tab 14. It is Exhibit 14 A, motion to set
3 bond, transcript of a hearing.

4 THE COURT: I have got that.

5 Q. Do you have that, Mr. Barrett?

6 A. Yes, I do.

7 Q. This is a transcript to set a bond hearing which
8 we obtained from the District Attorney's Office.

9 Do you know whether -- will you look at
10 page two of that transcript. Do you see page two of the
11 transcript?

12 A. Yes.

13 Q. That lists the names of witnesses that testified
14 at James Jones' bond hearing.

15 Do you see that list?

16 A. Yes, I do.

17 Q. Graham Reid. Did you ever contact Graham Reid in
18 this case?

19 A. I did not.

20 Q. Ikanga Bukemia. Did you ever contact that
21 person?

22 A. No.

23 Q. George Coleman. Did you ever contact that
24 person?

25 A. No.

1 Q. Gail Teresa Hughes. You contacted her and -- in
2 fact, she contacted you?

3 A. That's right.

4 Q. Except for James Jones' brother and his family
5 which we will get to later, did you ever attempt to
6 contact anyone that knew James Jones before he came to
7 Nashville?

8 A. No, sir.

9 Q. Now, you never found James Jones' parents, did
10 you?

11 A. I did not.

12 Q. And you never conducted an investigation to locate
13 his parents?

14 A. My memory is that based upon what Mr. Jones and
15 Ms. Hughes told me, we did not think we could locate
16 them.

17 I don't recall making any specific efforts
18 to find them.

19 Q. Now, in your post conviction testimony, you
20 testified about James Jones' brother, Mark Jones --
21 okay?

22 A. That's correct.

23 Q. And I am going to read portions of that testimony
24 and I have got a copy of the transcript if you want to
25 look at it while I read it.

1 A. I am familiar with it.

2 Q. All right. Page 178, you testified as follows in
3 the post conviction proceeding: We finally did contact
4 his brother who I believe had been stationed at Fort
5 Campbell and maybe had been recently transferred from
6 that post.

7 When we finally contacted his brother
8 prior to or during the trial, his brother made it clear
9 in a conversation either with Mr. Camp, I believe,
10 possibly myself, that the bottom line of it was that he
11 would not get involved in this; that the family had grown
12 tired or he had at least grown tired of Mr. Jones'
13 behavior.

14 In essence he was not going to help his
15 brother, he refused to come to trial to testify at the
16 sentencing hearing and finally just made it clear to us
17 that he was not going to get involved in this case.

18 Do you recall that testimony?

19 A. I do.

20 Q. And then on pages 195 to 196 of your testimony,
21 which is in volume one of the post conviction transcript,
22 you gave the following testimony:

23 Question. Are you aware that Mark Jones
24 shipped out to Europe in 1986, in October?

25 Answer. I know that he was apparently no

1 longer at Fort Campbell. At some point in time Mr. Camp
2 or I contacted his brother close to or during the early
3 stages of the trial. We finally had located the brother
4 and he simply made it clear he would not assist us and
5 would not be a favorable witness.

6 Question. But you have no notes
7 reflecting any conversation with Mr. Jones in your
8 files?

9 Answer. No, that is correct. The
10 conversation that either Mr. Camp or I had with the
11 brother was very short and to the point and there were
12 not any specific notes taken due to the fact that he, in
13 essence, said he did not want to discuss his brother and
14 as far as he was concerned it was kind of a closed
15 matter.

16 Do you recall that testimony?

17 A. Yes, I do.

18 Q. Now, isn't it true, Mr. Barrett, that you
19 personally were not the one who contacted the
20 brother?

21 A. It was I who indicated earlier, I do not believe I
22 spoke with the brother. My memory is that it was either
23 Mr. Camp, possibly Ed Swinger or someone in our office
24 staff.

25 I am very doubtful if I spoke to his

1 brother.

2 Q. I think you indicated to me it was your
3 understanding whoever did talk to the brother that that
4 conversation was a very short conversation?

5 A. Yes. It was a conversation that was very clearly
6 related to me, that the brother indicated he did not wish
7 to get involved in the trial.

8 Q. Now, if Mr. Camp were to testify that he never
9 contacted the brother, would you have any reason to doubt
10 that testimony?

11 A. No, I would not.

12 Q. Are you aware that Mark Jones, the brother, signed
13 an affidavit that was filed in the post conviction
14 proceeding?

15 A. Yes. You had advised me previously on that.

16 Q. Are you aware in that affidavit he stated that he
17 had not been contacted by anybody representing James
18 Jones?

19 A. Yes, you advised me of that.

20 Q. You have no personal knowledge to contradict that
21 statement, do you?

22 A. No, do not.

23 Q. Do you know how many times you met with James
24 Jones before trial?

25 A. I have no specific recollection of the number of

1 times.

2 Q. Do you have an estimate?

3 A. My estimate would be anywhere from -- I would say
4 between five and 10 times, would be my estimate.

5 Q. Do you recall how many times you met with Susi
6 Bynum, his wife, before the trial?

7 A. I do not.

8 Q. Do you recall spending any time with James Jones
9 preparing him for his sentencing hearing testimony?

10 A. I don't have any specific recollection of that.

11 I would be surprised if we did not -- if
12 we had not discuss the sentencing phase, particularly of
13 the trial.

14 I don't have any specific time frame or
15 indication when we would have done that.

16 Q. Do you recall spending any time with Susi Bynum
17 preparing her for her sentencing hearing testimony?

18 A. I don't have any memory whether I did or not.

19 Q. Did you ever talk to Susi Bynum about James Jones'
20 childhood experiences?

21 A. I had some conversations I believe with Ms. Bynum
22 or someone that certainly related to me that he had had
23 some childhood difficulties.

24 Whether it was Ms. Bynum or Ms. Hughes, I
25 cannot differentiate. I certainly recall knowing that

1 there was some problems with his childhood.

2 Q. Did you ever talk to her about his love of
3 children?

4 A. I have no memory at this time.

5 Q. Or his love of animals?

6 A. It seems that I do have a memory of discussions
7 with, I believe, him, certainly as to the animal
8 situation.

9 Q. Did you ever have any discussions with her about
10 his sense of loyalty?

11 A. I can't recall.

12 Q. Or his work habits?

13 A. I can't recall that specifically.

14 Q. Or problems in their personal lives?

15 A. I believe I was made aware that there were some
16 difficulties in their personal life.

17 Q. Did she ever tell you anything, or if you ask her
18 questions about his sleep problems?

19 A. I do recall there was some discussion about
20 difficulty with his sleeping.

21 Q. Did you ever talk to her about his head banging?

22 A. I can't recall that specifically.

23 Q. Or about any other behaviors?

24 A. There may have been discussion of other behavior
25 but I don't have a independent recollection.

1 Q. Did you ever have a discussion with her about his
2 personality traits?

3 A. I believe I did.

4 Q. Now, do you remember what those discussions
5 were?

6 A. No, I don't.

7 Q. Mr. Barrett, were you ever aware before trial or
8 even after trial of the fact that the TBI crime lab
9 tested James Jones' clothes for blood stains and found no
10 blood stains on his clothes?

11 A. I was not.

12 Q. You testified in the post conviction proceeding
13 that the plan of the guilt phase of the trial is to
14 attack the credibility of Devalle Miller, is that
15 correct?

16 A. That was certainly the focal point of the
17 defense.

18 Q. If you had known there was no blood stains on
19 James Jones' clothes, would that have affected your
20 handling of the case?

21 A. Yes, I believe it would.

22 Q. Didn't you tell us that would be a compelling
23 piece of information to use at the trial?

24 A. I am not sure I used the word compelling. I
25 think I indicated it would have been dramatic or

1 substantial.

2 Q. If you had a psychiatrist's evaluation of James
3 Jones, found him to suffer say from borderline
4 personality disorder or some other mental illness, would
5 that have affected your handling of the case?

6 A. It probably would have. The borderline
7 personality might not have affected the handing of the
8 case as much as something -- post traumatic stress,
9 disorientation or his reaction -- but certainly the fact
10 he had a borderline personally, I feel would be something
11 that would have factored in and it would have had some
12 bearing on our overall defense.

13 Q. You recall that you agreed to take this case for a
14 fee of \$15,000?

15 A. That's correct.

16 Q. And that fee was to cover everything for the case,
17 your fees and costs and everything else?

18 A. That's correct.

19 Q. And you only received \$5,000 of that fee,
20 correct?

21 A. I believe that is true.

22 Q. And you are aware that -- you collected that fee
23 from Gail Hughes, correct?

24 A. She brought it to the office, yes.

25 Q. And do you recall or do you know she testified in

1 the post conviction hearing that she delivered that
2 \$5,000 to you in the form of a cashier's check?

3 A. That is my memory. I wasn't aware she testified
4 to that. That is my memory.

5 Q. And she also testified that when she delivered
6 the check to you she told you that the money came from
7 Allen Boyd and you testified that you did not remember
8 that?

9 A. I did not remember that and my best memory is that
10 she did not tell me that.

11 Q. But would you not deny she may have told you
12 that?

13 A. Well, I cannot say as a matter of absolute
14 certainty she did not tell me that but I am pretty
15 strongly convinced in my own mind she did not tell me
16 that.

17 Q. Your testified that the 1972 prior murder
18 conviction was a significant problem with this case,
19 correct?

20 A. Yes, that is correct.

21 Q. And James Jones had stated to you it was related
22 to homosexual pressure he experienced at Petersburg, the
23 prison where that occurred?

24 A. Yes, I believe we discussed that.

25 Q. Now, did Mr. Zimmermann, the prosecutor, tell you

1 that that 1972 murder was related to a gang turf war over
2 who would control the drug trade in the prison?

3 A. My memory is that I was advised that that was the
4 basic source of difficulty. Whether the phraseology turf
5 war was used -- but I am sure that is the general concept
6 I was given.

7 Q. You were given that by Mr. Zimmermann, correct?

8 A. That is true.

9 Q. Before the trial?

10 A. Yes, sir.

11 Q. And did Mr. Zimmermann tell you that James Jones'
12 version that it was related to homosexual pressure was
13 not truthful?

14 A. That was what was conveyed to me, that was a very
15 dangerous position for the defendant to take because the
16 evidence would indicate it was to the contrary.

17 Q. And you are aware that Mr. Zimmermann brought to
18 the trial an FBI agent who was involved in the
19 investigation of that 1972 murder, correct?

20 A. Yes.

21 Q. Tell the Court what you recall about that.

22 Do you recall being introduced to that FBI
23 agent whose name was Agent Delagrange?

24 A. I do recall being introduced to him.

25 Q. What do you recall about that?

1 A. At some time during the trial proceedings the
2 agent had arrived in town. Mr. Zimmermann introduced him
3 to me in the courthouse.

4 I had some brief conversation with the FBI
5 agent, having already to some extent been advised as to
6 what the prosecution's position was and what the FBI
7 agent would in all probability testify to.

8 Q. Do you remember talking with the FBI agent about
9 this matter?

10 A. I do.

11 Q. What do you remember about that?

12 A. The gist of the conversation was that Mr.
13 Zimmermann's indications to me were to be borne out by
14 the FBI agent, that this was to some extent possibly
15 drug, or possibly not homosexual relations.

16 Q. You recall talking to us before and you recall you
17 did not recall having any specific conversation with the
18 FBI about this matter?

19 A. No. If I told you that, that was in error. I
20 thought I had advised you I thought I specifically
21 remember speaking with the FBI agent up on the fifth
22 floor of the courthouse at some point in time during the
23 course of the trial when Mr. Zimmermann had brought him
24 to the courthouse.

25 Q. Okay. Didn't you tell us that would have been

1 only a casual contact because you were in the middle of
2 the trial during that time?

3 A. We were during the trial. It was either during
4 the lunch break or recess. It was my interview of the
5 agent. It didn't last long, that is correct.

6 It lasted long enough for me to form an
7 opinion based upon what Mr. Zimmermann had told me and
8 what the agent told me that I did not wish to go into the
9 circumstances surrounding that 1972 offense.

10 Q. Let me show you a copy of Mr. Zimmermann's
11 testimony at the post conviction proceeding.

12 MR. MACLEAN: May I approach the witness,
13 Your Honor?

14 THE COURT: Yes.

15 Q. I have shown you from the third line of the post
16 conviction testimony pages 169 through 171 and pages 185
17 through 188.

18 Are you familiar with this testimony that
19 Mr. Zimmermann -- have you reviewed this testimony?

20 A. I believe you may have shown it the me
21 previously.

22 MR. MACLEAN: Your Honor, I would like to
23 make this Exhibit Number 130.

24 THE COURT: Okay.

25 Q. Now, the middle of page 170 Mr. Zimmermann

1 testified as follows: My purpose in introducing you to
2 Mr. Delagrange was to hopefully keep from getting into
3 this 1972 murder, if and Mr. Barrett could see what we
4 had and understand what kind of potential rebuttal
5 evidence it would confine the defendant's testimony
6 since I'd already provided to him the documentary
7 evidence as part of discovery.

8 I wasn't concerned about a discovery
9 violation but it was basically a tactic I've learned that
10 in cases like this if you have evidence that is a little
11 bit questionable, that could raise an appellate issue if
12 it is introduced.

13 And then he goes on and talks about that.

14 Over on the next page, page 185 the
15 question was asked by the court.

16 You said the FBI agent had indicated to
17 you that this may have been a dispute between two gangs
18 over drug turf, and let's assume for the sake of argument
19 that he believed that to be true.

20 Did the FBI agent have information that
21 would be admissible before the jury other than
22 conclusions and what he surmised?

23 Mr. Zimmermann goes on and says that is
24 what was related to him and it was not a homosexual
25 retribution matter and that was false.

1 Is that the message communicated to you by
2 Mr. Zimmermann, that it was a drug turf war and not a
3 homosexual retribution matter?

4 A. Yes, sir, that is certainly the general nature of
5 it.

6 Q. And did you conduct any kind of examination of
7 either Mr. Zimmermann or Mr. Delagrange as to the nature
8 of the evidence that they had or what the nature of Mr.
9 Delagrange's testimony might be in connection with that
10 matter?

11 A. No. After the conversation I had with the FBI
12 agent, I had no further conversation with him.

13 Q. Did you basically trust what Mr. Zimmermann told
14 you about this subject?

15 A. Based upon what Mr. Zimmermann said and the agent
16 said, that I felt it was possibly an accurate
17 presentation to me.

18 MR. MACLEAN: Your Honor, may I approach
19 the witness?

20 THE COURT: Okay.

21 Q. I am handing you a set of documents that came out
22 of the prosecutor's files. I would like this set of
23 documents to be marked Exhibit 131.

24 I want to go through these documents and
25 ask you, Mr. Barrett, whether before the trial or during

1 the trial you saw any of these documents?

2 The first document is a motion for
3 psychiatric examination.

4 Did you see that?

5 A. I did.

6 Q. Do you see that was filed in connection with the
7 1969 assault matter for which Mr. Jones was ultimately
8 incarcerated prior to the 1972 killing?

9 THE COURT: Mr. MacLean, do I have a copy
10 of that?

11 MR. MACLEAN: Yes. It is Exhibit 131.

12 THE COURT: Thank you.

13 Q. Do you see paragraph one of that motion?

14 A. I do.

15 Q. Could you read that, please.

16 A. Subsequent to his arrest on April 9, 1969, the
17 defendant became violent, repeatedly struck his head on
18 the window of the police car; burned the bed sheet in his
19 jail cell and attempted to asphyxiate himself.

20 Q. Could you read paragraph two.

21 A. Defendant has a history of violence, criminal
22 involvement and suicidal attempts.

23 Q. And then what is the relief they are asking for?

24 A. That the court provide at government expense
25 psychiatric examination of the defendant.

1 Q. And have you ever seen this document before?

2 A. I have not.

3 Q. Would you look at the next document.

4 The next document was the conviction in
5 connection with the 1969 assault charge.

6 Had you ever seen this document before?

7 A. I do not believe that I had seen that certainly
8 prior to trial and probably not during the trial.

9 Q. Would you look at the next document, please. This
10 documents is the transcript from the 1972 trial.

11 Had you ever seen this transcript before?

12 A. No.

13 Q. Would you turn to the page that is date stamped
14 page 767, please.

15 A. Yes, sir.

16 Q. This is the testimony that was given by a
17 psychiatrist on behalf of James Jones at that trial.

18 Were you aware that in that 1972 case
19 James Jones raised an insanity defense?

20 A. I do not believe I was.

21 Q. Now, if you see starting at line 11 the testimony
22 that was given by the psychiatrist in that case.

23 My conclusion after I sat and talked with
24 him -- this referring to James Jones -- this is basically
25 a schizoid human being, meaning he is a loner, never felt

1 close to anybody, always rebelled to authority because in
2 his mind authority has not been benevolent, as symbolized
3 by his father who is in the military police, always been
4 in the Military Police.

5 And he never learned or was not able -- I
6 don't know. I would have to tell in a sense how to
7 tantalize control, and at any sign of pressure he would
8 submit either to harm himself or harming somebody else.

9 So, we consider this an illness. So, in
10 that answer, he is a sick man.

11 Were you ever aware that someone testified
12 prior to the '72 case that James Jones was a sick man?

13 A. I was not.

14 Q. Would you look over on page 771, page 51 of the
15 transcript starting down at line 19.

16 Now, how about somebody who would be
17 repeatedly doing criminal acts such as assault with a
18 dangerous weapon, a repeated pattern over, say, a period
19 of four years using the same type weapon.

20 Would you say that is a diseased mind, an
21 irresistible, impulse type situation?

22 The doctor again -- testifying on behalf
23 of Dr. Masri, he testifies as follows.

24 Not as a general total judgment on my
25 part. But some of them have what we call repetition

1 compulsion. Whenever they have the same impulse they do
2 the same thing whether you internalize hostility or
3 negative feeling in attempt to harm oneself, or whether
4 you externalize it or project it, in a sense, and hurt
5 other people.

6 Well, what I am getting at, are you basing
7 what you're saying is a disease on the result that the
8 defendant can't control himself when he panics?

9 Answer. Exactly.

10 Question. All right. So what are you
11 saying is that he cannot control himself when he
12 panics?

13 Answer. Nodding affirmatively.

14 Is that a disease in your mind?

15 Answer. Yes.

16 And then if you look over on page 773,
17 page 53 of the transcript, starting at line 11.

18 Do you have a medical name for this
19 disease?

20 Answer. I would call him schizoid
21 personality, number one. I would call him borderline
22 personality with periodic decompensation with loss of
23 control, of ego control.

24 Is that the name of the disease?

25 That is what I would call him, yes.

1 Question. Thank you.

2 Were you aware a doctor, psychiatrist in
3 his 1972 case diagnosed him with borderline personality
4 and schizoid personality and loss of control?

5 A. I was not.

6 Q. If you will look over on page 781, date stamped,
7 page 61 of the transcript, you will see the testimony of
8 Dr. Eardley that testified for the prosecution in that
9 case. Dr. Eardley give this version of what happened,
10 starting at page one.

11 He -- meaning James Jones -- indicated to
12 me we try to work out something with this Stein --
13 spreading false rumors is the testimony -- and did go
14 down there to talk to him in his cell and Stein sort of
15 put him off and laughed at him. I think Jones just lost
16 his temper and got very angry at the situation. I think
17 we all would have been angry in a situations and
18 momentarily we don't realize what we are doing.

19 Well, then, at the moment this happened he
20 didn't realize what he was doing. Is that what you're
21 saying?

22 Well, I think you know a temporary period
23 for a fleeting second at times we forget. And that is
24 conceivable.

25 You are in such a state. You are so

1 angry, you don't think at that moment.

2 Question. Not that that would be
3 considered temporary insanity, would it not?

4 Answer. Well, I don't know --

5 The Court. I am sorry. I didn't hear
6 your answer, doctor. What is your answer?

7 The witness. I said, I don't know.

8 The Court. You don't know?

9 That was the prosecution's witness in that
10 case.

11 Were you aware that the prosecutor
12 testified that way in the 1972 hearing?

13 A. No, I was not.

14 Q. Were you aware that the prosecution had this
15 transcript in their file before the trial?

16 A. No, sir.

17 Q. Now, would you please turn to -- Exhibit 49. I
18 would like you to go to the very last document we were
19 on, Exhibit 1 31. That is the final judgment, I believe,
20 in the 1972 case.

21 Will you look at that again.

22 A. Yes, I have.

23 Q. Look down near the bottom where it says the court
24 recommends commitment. To do you see that?

25 A. Yes.

1 Q. Institution wherein defendant may receive
2 psychiatric treatment.

3 Were you aware that in the 1972
4 conviction that the court had recommended that he be
5 placed in an institution where he might receive
6 psychiatric treatment?

7 A. No, I was not.

8 Q. Were you aware that the prosecution had this in
9 their documents before the trial?

10 A. No, sir.

11 Q. Would you look at Exhibit 49. There are two 49s.
12 I want the first 49, not 49 A.

13 Do you see that a letter dated April 15,
14 1987?

15 A. That's correct.

16 Q. And it is a letter addressed to Mr. John
17 Zimmermann from from David G. Lowe, United States
18 magistrate.

19 Do you see that?

20 A. I do.

21 Q. This letter was dated before the trial. The trial
22 in this case was in July of 1987, correct?

23 A. Yes, sir.

24 Q. This is a letter from David Lowe who is the
25 attorney with the United States Attorney's Office that

1 prosecuted the 1972 case. Mr. Lowe subsequently became a
2 United States magistrate.

3 Would you turn to the second page.

4 THE COURT: What was Mr. Lowe's role at
5 the time?

6 MR. MACLEAN: He was the prosecutor at the
7 1972 trial. He was with the United States Attorney's
8 Office at that time.

9 At the time he wrote the letter he was a
10 United States magistrate.

11 Q. Do you see at the top of page two, and let me read
12 to you. The case agent Lawrence W. Westcott interviewed
13 Jones and obtained the written statement. Jones
14 attempted to make it appear that the stabbing was because
15 Stein who was the victim had been spreading rumors about
16 him.

17 Prison records indicated there was no
18 hostility between the two although there was a report
19 that Jones had been engaged in homosexual activities with
20 an inmate Willie Williams and a inmate whose last name
21 was Smith.

22 Institutional records indicate that Jones
23 may have been beaten up or beaten by these two inmates
24 when he refused to return sexual favors. The report
25 continued that Jones then gathered up his group and they

1 began to walk the compound looking for Willie Williams.
2 It was this report that convinced me that Jones probably
3 was a violent troublemaker.

4 Were you aware of the letter?

5 A. No.

6 Q. Was that letter ever turned over to you by the
7 prosecution in this case?

8 A. It was not.

9 Q. This letter indicates that the 1972 killing was
10 related to homosexual pressure, correct?

11 A. It does.

12 Q. Now, based upon the letter which is Exhibit 49 and
13 the documents that were in the prosecutions file which is
14 collective Exhibit 131, was the information that Mr.
15 Zimmermann gave to you verbally about the 1972 case being
16 a drug turf war matter accurate information?

17 A. Well, it does not appear to be consistent. The
18 information I received certainly doesn't appear to be
19 consistent with the documents you referred to.

20 Q. Based upon these documents, do you feel you were
21 deceived by the prosecution about the 1972 killing?

22 A. Deceived is a pretty strong word. Certainly the
23 information I received misled me as to the strength of
24 any potential testimony that my client might give along
25 those lines.

1 Q. If you had had the transcript of the 1972 trial
2 and you had been aware in the 1972 trial James Jones had
3 raised an insanity defense and you had been aware even
4 the prosecution's expert witness said he may have lost
5 control at the time of the incident, would you have
6 handled this case differently?

7 A. I very well might have. You have to break it down
8 as to the guilt or innocence phase and the sentencing
9 phase.

10 Certainly this information would have some
11 bearing on both the guilt or innocence phase and the
12 sentencing phase.

13 I believe that had I had this information
14 that I would have certainly taken a much closer look at
15 any potential psychiatric defense that might be available
16 to Mr. Jones both at the guilt and innocence phase and
17 certainly as mitigation at the sentencing phase.

18 Q. Would you have gone to the judge for money for
19 psychiatric services?

20 A. Based upon what I see her, I believe I would have,
21 sir, yes.

22 Q. All right. Now, what I would like to do is go to
23 the binder and start at the beginning and go through the
24 chronology of this case. I would like to start with
25 Exhibit Number 1.

1 Exhibit Number 1 is the police report.

2 Before the trial, you had not been given any police
3 reports by the prosecution, had you?

4 A. I don't believe I had.

5 Q. Are you looking at Exhibit Number 1 right now?

6 A. Yes.

7 Q. Would you look down the fifth line from the top of
8 the handwritten report. Do you see the sentence there
9 that says James Pattan who lives at 858 A Kirkland and
10 phone 292-4894, I believe, and Henry Lawson that lived at
11 854 A Kirkland, home 298-1286, work 355-2625 were in the
12 house.

13 Meaning they were in the house at the time
14 the first police arrived at the crime scene.

15 Did you know there were other individuals
16 who were in the house at the time the police arrived at
17 the crime scene?

18 dA. Mr. MacLean I am not certain. I don't recall
19 seeing this document. Whether or not I had been aware
20 that there may have been other persons there, I can't say
21 for sure one way or the other.

22 Q. Alright. Will you go to Exhibit Number 3, please.
23 If you will look there -- do you have Exhibit 3 which is
24 a typed report by Detective Mark Garafola?

25 A. Yes.

1 Q. If you will look at the second paragraph about
2 two-thirds down the page. In the second line of that
3 paragraph it says it was learned that both of these
4 vehicles belonged to the victims.

5 Do you see that?

6 A. Yes.

7 Q. You are aware that Norma Norman testified there
8 was \$300 stolen from her or from the apartment and that
9 was money she was saving to buy a car? Do you remember
10 that?

11 A. I have a memory of that, now that you mention it.

12 Q. Did you know both owned vehicles at the time of
13 the offense?

14 A. I assume that is correct. Again, I don't recall
15 that specifically.

16 Q. Did you do any investigation into that?

17 A. No. As far as the owners of the cars, I believe
18 the plaster cast or tire tracks, I remember that coming
19 into play, I believe, during the trial.

20 But specifically whether or not both of
21 the victims owned separate cars, I don't have any memory
22 of that.

23 Q. If you will look at the next page. Six lines down
24 it says I also observed a large amount of blood
25 spattering on the items near the victim. It was on the

1 walls, bar and divider.

2 Were you ever aware of the fact there was
3 a large amount of blood spattering on the items near the
4 victim?

5 A. I don't have any independent memory of that as to
6 whether I was or was not aware of it at the time.

7 Q. You recall that Norma Norman in her trial
8 testimony testified the \$300 had been taken from a little
9 container on top of the chest in the bedroom. Do you
10 remember that?

11 A. I remember that, sir.

12 Q. Will you look down a couple lines down with the
13 sentence that begins as follows: In the master bedroom I
14 found a black woman's purse on the bed. All of the
15 contents had been dumped onto the bed. The driver's
16 license there was issued to Norma Jean Norman. The chest
17 of drawers in that room had not been opened. It did not
18 appear that the room had been searched by anyone. Do you
19 see that?

20 A. Yes.

21 Q. Did you know before trial or during trial that the
22 police had reported that except for the purse that had
23 been laid out on the bed that the room appeared not to
24 have been searched by anybody?

25 A. I don't recall that. Certainly prior to trial and

1 whether or not it was testified to at the trial, I don't
2 recall at this time.

3 Q. You may have received this report as Jencks'
4 material during the course of the trial. You didn't
5 receive this before the trial?

6 A. That's correct.

7 Q. You didn't discover this through any other means,
8 did you?

9 A. I don't think so.

10 Q. If you will look at the the last short sentence in
11 the paragraph where --

12 THE COURT: Let me go back to that
13 question.

14 Do you have any memory that you received
15 this as Jencks' material?

16 A. I don't recall, Your Honor. This is, as I
17 believe, the testimony of Detective Mark Garafola. I
18 would have to go back and look at the trial record.

19 Certainly we always ask for Jencks'
20 material. Whether or not Detective Garafola testified at
21 the trial, I don't recall at this time. If he did, I
22 feel certain I would have requested Jencks' material and
23 this should have been turned over to me.

24 THE COURT: All right. Go ahead.

25 Q. Look at the very last short sentence in the same

1 paragraph. This is where they are talking about the
2 other bedroom.

3 Do you see the words there that say there
4 was also a white powder on these items?

5 Do you see that?

6 A. Yes.

7 Q. Did you know the police had discovered a white
8 powder in the other bedroom?

9 A. I doubt it. I certainly don't recall at this
10 time.

11 Q. Will you turn to the next, Exhibit Number 4.
12 Exhibit 4 talks about items that were taken from the home
13 of the victims' after the offense.

14 You will see at the bottom it talks about
15 a bag of inventory they collected and bag contains the
16 following things: There is a typo there, but blue jeans
17 with a piece of duct tape.

18 Number two, strip of duct tape.

19 Number three, hypo syringe cap.

20 Had you ever seen this report before or
21 during trial?

22 A. I don't believe so.

23 Q. Were you aware of the fact that the police had
24 collected a hypo syringe cap at the scene of the
25 offense?

1 A. I doubt it. I don't recall. I don't believe I
2 was.

3 Q. Will you look at Exhibit Number 5. This is
4 another report by Detective Garafola.

5 You recall that Norma Norman testified in
6 her trial, in the trial, that the \$300 was taken from
7 that little box in the chest in the bedroom and that was
8 money she had saved from her earnings at her job.

9 Do you recall that testimony?

10 A. I believe I do, yes.

11 Q. Will you look at six lines from the bottom,
12 please. Over in the right hand part of that line. The
13 sentence that starts, they did get some grass and about
14 \$300 that Patrick had.

15 Do you see that?

16 A. Yes.

17 Q. And this was the report of Detective Garafola of
18 his interview of Norma Norman in the hospital just a
19 couple days after the offense.

20 Did you ever get this information before
21 the trial, that she had told the police that \$300 had
22 been taken from Patrick Daniels?

23 A. No, I don't believe I did, sir.

24 Q. Would you look at the next exhibit, Exhibit Number
25 6.

1 Do you recall at the trial Norma Norman
2 and Devalle Miller both testified that Devalle Miller,
3 the defendant, froze and didn't move much, and that it
4 was James Jones who did everything after that point in
5 time until they left the apartment?

6 Do you recall that testimony at the
7 trial?

8 A. I remember that was sort of the thrust of the
9 testimony.

10 Q. And Exhibit Number 6 is a transcript of a tape
11 recorded interview of Shonta Norman one of the children
12 of Norma Norman.

13 Did you ever see this at any point in
14 time?

15 A. No.

16 Q. Would you look at the second page, line 12. Do
17 you see that page?

18 A. Yes, I do.

19 Q. It says Norman, meaning the girl, Shonta Norman,
20 describing the time when she opened up the door briefly
21 and saw into the living room. She said, the man in the
22 Army jacket -- meaning Devalle Miller -- was tearing
23 paper and throwing stuff all over the floor and tearing
24 the pillow up.

25 Were you ever given information that

1 somebody had observed Devalle Miller acting in that
2 manner?

3 A. I don't believe so.

4 Q. Will you look to the next exhibit, number seven.
5 Now, Exhibit 7 is really two different pages here, two
6 copies of the same document. But the first page a
7 portion is redacted.

8 Do you see that?

9 A. Right.

10 Q. And this was from a report that Detective Garafola
11 prepared, and this first page in the redacted form was
12 turned over to you as Jencks' material at the time that
13 Detective Garafola testified at the trial, correct?

14 A. I believe that is correct, yes.

15 Q. But the second page is the full document without
16 the redaction was not turned over to you, correct?

17 A. If that is what the record reflects. I am sure it
18 is.

19 Q. In the redacted portion, if you look at the
20 second page, here Detective Garafola talks about what
21 he observed when he went back to the jail after
22 searching James Jones' apartment. He indicated up above
23 that he searched James Jones' apartment about 1557 hours,
24 which would be about close to four o'clock, and then came
25 back to the jail. And he said as follows on the second

1 page:

2 When we returned to our office, Detective
3 Elmore and myself attempted to interview James Jones. He
4 was in an interview room. When he entered the room,
5 Jones was crying. He would not respond to our questions.
6 The only statement he made was, quote, I only killed one
7 man in my life and that was because he was trying to fuck
8 me. End of quote.

9 He then started to hit his head on the
10 table and then he jumped up still handcuffed to the chair
11 and banked his head up against the wall.

12 We got him under control and then took him
13 to the booking room, and in the booking room he started
14 to bang his head on the wall again. Detective Elmore was
15 able to control him.

16 We took Polaroid pictures of him and also
17 mugshots with his glasses on and off.

18 Were you ever aware, Mr. Barrett, of the
19 fact that on the day of the arrest James Jones banged his
20 head against the wall as is described here?

21 A. No, I was not.

22 Q. Now, are you aware of the fact that Dr. Craddock
23 testified last Friday that head banging is an extremely
24 rare behavior?

25 A. Well, I accept that if that is what he testified

1 to.

2 Q. Will you look at Exhibit Number 8. Exhibit Number
3 8 is a classification interview, Davidson County
4 Sheriff's Department.

5 Do you see that?

6 A. Yes, I do.

7 Q. Will you turn to the fourth page of that. It is
8 hard to read. Will you look at that, please.

9 All right. This is a report, handwritten
10 report and the date, if you will look up there, appears
11 to be 2-19-86, the date of James Jones' arrest.

12 Okay?

13 A. Yes.

14 Q. And the time of the incident appears to be 1945
15 which is about 7:45 in the afternoon, which would then be
16 after, apparently, Detective Garafola made his
17 observation as reflected in Exhibit 7. Let me read this
18 to you.

19 On the above date and time, inmate Jones
20 was received through -- and I can't read that. Can you
21 read that. ISB or something. After Mr. Jones was
22 interviewed, he stated that he wanted to see his wife.
23 After informing Jones that he could visit his wife during
24 visiting day, Mr. Jones insisted he was going to see his
25 wife. During this moment Mr. Jones started beating his

1 head against the floor in the presence of Reverend
2 Turner.

3 Action taken. Taken to padded cell until
4 further notice.

5 Was this document ever turned over to you
6 during the course of this case?

7 A. No, it was not.

8 Q. Were you aware James Jones on the day of the
9 arrest acted in this way and was placed in a padded cell?

10 A. No, sir.

11 Q. Would you look at the next page, sir. This is
12 another report dated 2-21-86 which would have been two
13 days later, 3:15 p.m..

14 Do you see that?

15 A. Yes.

16 Q. And it says Mr. Jones' condition appears to be
17 stabilized to the point that he can be moved from the
18 padded cell.

19 Did you ever see this document before?

20 A. No, sir.

21 Q. Were you aware he was placed in the padded cell
22 for a period of two days?

23 A. I was not.

24 Q. Okay. Will you look at Exhibit 9 and there are
25 two pages, first page is the size that we copied it on

1 and the second page we made another copy that is slightly
2 bigger.

3 Do you see that?

4 A. Yes.

5 Q. These are the progress notes at DeDe Wallace taken
6 by Dr. Morgan and Dr. Koomen. Look at the second page.
7 It is a little easier to read. It is 3-4-86. Down at
8 the bottom of the first note by Leonard Morgan, if I can
9 read this correctly, it says this man is involved in a
10 criminal situation which will be very public event.

11 It is not possible to do an adequate
12 evaluation in this situation and transfer to MTMHI is
13 recommended.

14 Were you aware that Dr. Morgan had looked
15 at James Jones on 3-4-86 and determined an evaluation at
16 DeDe Wallace was not possible at that time?

17 A. No, sir.

18 Q. Would you look at the next exhibit, Exhibit Number
19 9. Exhibit Number 9 appears in a couple places in this
20 book. This is the lab report dated May 22, 1986 and it
21 says at the bottom of that page Exhibit 9 A, number
22 three, test failed to indicate the presence of blood
23 staining relating to a pair of blue work pants.

24 Top of the next page. Test failed to
25 indicate the presence of blood staining relating to

1 another pair of blue work pants and, number six, tests
2 failed to indicate the presence of blood staining
3 relating to a black coat that was seized from James
4 Jones' apartment.

5 You never saw this report and you were not
6 aware of this information, correct?

7 A. That's correct.

8 Q. Exhibit Number 10. The first indictment issued in
9 this case.

10 You see on that indictment -- do you see
11 Exhibit 10?

12 A. Yes.

13 Q. Do you see a list of witnesses for the state on
14 that indictment?

15 Except for Allen Boyd about four fifths of
16 the way down in that list, did you contact anyone who was
17 listed on this list and interview them in connection with
18 this case?

19 A. No, I don't believe I did.

20 Q. You did not?

21 A. That's correct.

22 Q. Exhibit Number 11. Exhibit Number 11 is the
23 discovery request that had been served on the state by
24 Neal McAlpin in August of 1986.

25 You testified before that you don't

1 believe you received any of Mr. McAlpin's files and
2 this discovery request was not in your file, is that
3 correct?

4 A. That is true.

5 Q. You never saw this discovery request before the
6 trial in this case, did you?

7 A. I don't believe so.

8 Q. Exhibit 11 that was.

9 Exhibit 12 was the state's response to
10 motion for discovery which was the state's first response
11 to discovery and it is dated August 21, 1986. This was
12 served on Mr. McAlpin.

13 This response was not in your file, was
14 it?

15 A. I accept that. I don't believe it was.

16 Q. You never saw this before the trial in the case,
17 did you?

18 A. In all probability I did not. I don't have a
19 memory of seeing it.

20 Q. You did not review the documents attached to this
21 response at any time prior to the trial or during the
22 trial, did you?

23 A. I don't believe I did. Some of them look familiar
24 but that might have come about during possibly the course
25 of the trial.

1 Q. If you will look at the next, Exhibit Number 14,
2 which is the autopsy report.

3 Now, I believe you may have received a
4 copy of the autopsy report. Do you know for sure one
5 way or the other whether you reviewed the autopsy
6 report?

7 A. I believe I did, Mr. MacLean. Again, I can't
8 conclusively say that. I believe we had the autopsy
9 report and I reviewed it.

10 Q. Would you look at the third page of the autopsy
11 report I believe date stamped 45 down at the bottom.

12 Did you notice that the drug screen, urine
13 drug screen for the victim was positive for cocaine?

14 A. Yes.

15 Q. Did you take note of that before the trial?

16 A. It seems as though I did. Again, I cannot
17 conclusively say one way or the other. I believe I was
18 aware of that.

19 Q. Will you go to Exhibit 16, please. Exhibit 16 is
20 a supplemental response number one to request for
21 discovery which was served on Mr. McAlpin, and this
22 response was not in your file, was it?

23 This is a copy of the autopsy report. But
24 the actual supplemental response wasn't in your file?

25 A. If it was not, it was not.

1 Q. Okay. Would you look at Exhibit Number 19,
2 please. Exhibit 19 is the state's supplemental response
3 number two.

4 This again was served on Neal McAlpin and
5 this again included the laboratory report that we talked
6 about before and although it was in Mr. McAlpin's file,
7 you don't believe it was in your file?

8 A. That's right.

9 Q. Would you look at Exhibit Number 22. Exhibit
10 Number 22 is a motion that was dated October 27, 1986 by
11 Neal McAlpin for an additional mental evaluation of the
12 petitioner, James Jones.

13 Now, this motion was filed before you
14 became actively involved in the case, wasn't it?

15 A. That's correct.

16 Q. Would you look at Exhibit Number 23. Exhibit 23
17 includes a memorandum in the prosecutor's file relating
18 to a interview with George Bland at First American
19 security.

20 You are aware there was an allegation that
21 a bank card was stolen from Patrick Daniels at the time
22 of the offense?

23 A. I recall that.

24 Q. That was one of the charges, robbery charge
25 against the defendant?

1 A. That's correct.

2 Q. Were you ever made aware of the fact that the
3 prosecution had learned that Patrick Daniels did not have
4 a bank account at First American even though it was a
5 First American card allegedly stolen from him?

6 A. No, I wasn't.

7 Q. Will you look now at Exhibit 24. Exhibit Number
8 24 I believe is the first document in your file
9 chronologically relating to this case. It is a memo
10 dated October 21, 1986.

11 This was your first contact with the case,
12 is that correct?

13 A. I believe so, yes.

14 Q. It says, please call Gail Hughes at work.

15 This is a memo to your secretary Gwen, is
16 that correct?

17 A. That's correct.

18 Q. You are asking your secretary to set up an
19 appointment with Gail Hughes to talk about the
20 possibility of taking on the case, correct?

21 A. That's correct.

22 Q. And you sent Ed Swinger your law clerk to go talk
23 to James Jones at the prison, right?

24 A. That is what it indicates, yes.

25 Q. It says here she will be in to see you for a

1 Friday appointment at 5:30.

2 Do you see that at the bottom?

3 A. Yes, I do.

4 Q. Now, Exhibit Number 25. There is a memo to Ed
5 Swinger from you dated October 27, 1986 and you say in
6 the Fifth Circuit there is a murder charge against a
7 fellow by the name of James Lee Jones. I think that
8 right now he is being represented by attorney Neal
9 McAlpin. There is some type of hearing set for Thursday
10 the 30th in the Fifth Circuit Court.

11 So, this is something else that you did in
12 connection with this case, correct?

13 A. That's correct.

14 Q. But at this time you had not agreed to take on the
15 case?

16 A. That's right.

17 Q. Then the next exhibit is the Exhibit Number 26 and
18 it is a memo to Gwen your secretary from you dated
19 November 3, 1986 and you are asking your secretary,
20 please call Gail Hughes at work or at home and tell her
21 that due to the serious charges in the case of James Lee
22 Jones we would have to have \$15,000 in advance before we
23 could get involved in the case.

24 Do you recall that?

25 A. Yes.

1 Q. And then 11-3, the note was she will start trying
2 to get it together.

3 And then 11-5 the note is, I spoke about
4 Gail and she is supposed to bring check for \$15,000 in
5 this week, is that correct?

6 A. That's correct.

7 Q. How did you get in touch with Gail Hughes about
8 arranging your fee in this case?

9 A. Well, I believe these memos indicate that I had my
10 secretary attempt to contact Ms. Hughes. That is pretty
11 self-explanatory.

12 Q. How did you know for her to contact Gail Hughes?

13 A. I believe going back to one of the earlier
14 exhibits, that Gail Hughes was the person that had
15 contacted me either by telephone or possibly in person
16 about the possibility of representing Mr. Jones.

17 Q. Now, on November 17, 1986 the next exhibit is
18 Exhibit Number 27. Mr. McAlpin had written to Mr. Jones
19 a letter.

20 Do you see that?

21 A. I do.

22 Q. And he said, pursuant to our conversation of
23 November 10th you have given me notice you no longer
24 intend to retain my services. As a matter of note, I
25 began working on your case February 20, 1986.

1 Please find enclosed copy of motion for
2 additional mental evaluation.

3 Were you aware at that time that by
4 November 17th, which was two weeks after the note you
5 wrote to Gwen your secretary that Neal McAlpin was
6 beginning to withdraw from the case?

7 A. I knew that there was some discussion or
8 dissatisfaction or some problem with Mr. McAlpin's
9 representation. But the letter of November 17th, I
10 wasn't familiar with. That was not a date that I was
11 aware of at that time.

12 Q. But I am saying during that period of time, did
13 you know he was beginning to withdraw from the case?

14 A. Begins to withdraw is probably an accurate phrase.
15 I knew Mr. McAlpin had been involved in the case and that
16 there was some possibility he was getting uninvolved in
17 the case.

18 Q. Now, Mr. McAlpin testified here that during this
19 period of time, he had seen you in the hallway at the
20 courthouse and had said he understood you were getting
21 involved in the case and offered to get together with you
22 and to show you his file.

23 Does that sound correct to you?

24 A. Yes, I would not dispute that.

25 Q. Now, Exhibit Number 28 is the order for further

1 evaluation that was entered by Judge Kurtz on November
2 24, 1986.

3 Do you see that?

4 A. Yes, I do.

5 Q. And then Exhibit Number 29 is another memo from
6 you to Gwen dated December 17, 1986. This is also from
7 your file, correct?

8 A. That's right.

9 Q. Please call Gail Hughes at work or at home. She
10 still owes \$10,000 on the matter involving James Lee
11 Jones. She has paid \$5,000.

12 So, it appears then that you were paid
13 \$5,000 sometime between November 3, 1986 and December 17,
14 1986, is that correct?

15 A. That's correct.

16 Q. And then you go on and say I need to start
17 working, doing a lot of work on Mr. James Lee Jones' case
18 next week. Please find out if it is going to be possible
19 for her to bring in the additional \$10,000 prior to the
20 start of the year, since there is a lot of work to be
21 done on this murder case and I need to know what the
22 status of it is.

23 Do you recall that?

24 A. Yes, I do.

25 Q. And then you see down there notes from Gwen. She

1 left messages and then finally, apparently, she had a
2 call with Gail Hughes that said she doesn't have it now
3 but will try to come up with it.

4 Does that sound correct?

5 A. That's correct.

6 Q. Now, Exhibit Number 30 is a letter from Larry
7 Southard to Neal McAlpin relating to the evaluation.

8 Are you familiar with this form letter?

9 A. Yes. I have seen the form before.

10 Q. Isn't this the type letter that MTMHI will send to
11 both the prosecution and defense counsel requesting
12 information in connection with a forensic examination of
13 a defendant?

14 A. That's correct.

15 Q. And is it your normal practice when you receive
16 this kind of letter to respond by giving information to
17 MTMHI about your client to assist them in their
18 evaluation?

19 A. That's correct.

20 Q. Is that an important job for a defense lawyer to
21 do in this kind of situation?

22 A. Yes, it is.

23 Q. Now, Mr. Barrett, isn't it true that if as a
24 defense counsel you believe that there may be serious
25 mental health issues in your case that it is the smart

1 thing to do to get your own psychiatric or psychological
2 evaluation before the defendant is sent over to MTMHI for
3 the state evaluation?

4 A. Yes, I think that is a fair evaluation.

5 Q. You want to know what kind of mental health issue
6 you have before you subject your client to interrogation
7 by people with MTMHI, correct?

8 A. Yes.

9 Q. You want to gather as much information as you can
10 to try to assist MTMHI in doing their evaluation, is that
11 correct?

12 A. That's correct.

13 Q. And by getting your own evaluation ahead of time
14 that should put you in a better position of potentially
15 assisting MTMHI with their evaluation?

16 A. Yes.

17 Q. Because their evaluation could make a difference
18 in the case?

19 A. It could.

20 Q. And in this case no one had, for the defense had
21 arranged for James Jones' evaluation before he was sent
22 over to MTMHI, correct?

23 A. Yes, that is correct.

24 Q. Now, at this point in time when Mr. Jones was sent
25 over to MTMHI in late January of 1987 Neal McAlpin

1 already started to withdraw from the case?

2 A. Based upon the documents you have shown me, that's
3 correct.

4 Q. You already agreed to take on the case for
5 \$15,000, correct?

6 A. Yes.

7 Q. You already received \$5,000 of that payment,
8 correct?

9 A. That's correct.

10 Q. And you are waiting to receive the other \$10,000?

11 A. Yes.

12 Q. And you were not getting started on the case until
13 you received the additional \$10,000, at least that was
14 your position at this point in time?

15 A. That's correct.

16 Q. So, at this point in time James Jones was kind of
17 in a hiatus, kind of in the middle between lawyers?

18 A. It appears that is true, yes.

19 Q. He was not being actively represented by anybody
20 at this time while at MTMHI?

21 A. I don't know what time he was relieved of this
22 representation but I think your statement is an accurate
23 assessment.

24 Q. Would you turn to Exhibit Number 32. This is
25 another memo from you to Gwen dated February 3, 1987

1 again urging Gwen to call Gail Hughes to urge her to come
2 up with the other \$10,000, correct?

3 A. That's correct.

4 Q. It says, please call Gail Hughes and tell her I
5 want to start work on the case involving James Jones but
6 she has only paid \$5,000 and we need to have the
7 additional money paid. I would like to meet with her
8 next week.

9 She said below she spoke with Gail and
10 told her you were getting involved in James' case and she
11 needed to get additional money in here. She said she
12 would call her, quote, funding source today.

13 Do you see that?

14 A. I do.

15 Q. If you look at the next page as part of Exhibit 32
16 on that same day you wrote a memo to Ed. You said you
17 need to check and see if James Jones is still at the
18 Metro Jail or if he has been transferred out to Deberry
19 for psychiatric evaluation pursuant to the court order
20 from the Fifth Circuit Court.

21 I definitely need this information this
22 week. And then Ed wrote back on 2-5-87.

23 Lionel. Jones no longer at Metro jail.
24 Transferred out.

25 So, at this point in time you were put on

1 some kind of notice that Jones was undergoing a
2 psychiatric or psychological evaluation?

3 A. I think so, yes.

4 Q. Did you do anything about that at this point in
5 time?

6 A. No. I don't recall at this time going out to
7 MTMHI and taking any independent action.

8 Q. All right. Will you look at Exhibit Number 36,
9 please. February 23, '87. This was very close to the
10 point in time when James Jones was being released from
11 MTMHI.

12 If you look at Exhibit Number 36 and 36 A,
13 and Exhibit 35 is the letter from the forensic services
14 division to the judge dated February 23, 1987 stating
15 that the evaluation at MTMHI was complete and they found
16 James Jones to be competent and that he could not support
17 an insanity defense.

18 That is their typical letter when they
19 make those findings, is that correct?

20 A. That's correct.

21 Q. On the same day you wrote Gwen a letter, memo
22 saying, please call Gail Hughes and tell her that I am
23 really confused about the situation. I have got the
24 initial money she has paid and I am willing to represent
25 James Lee Jones, but she has to come in and meet with me

1 so we can talk about the case and see where we stand on
2 it.

3 Below it says that Gwen set up appointment
4 for March 2nd.

5 Do you see that?

6 A. I do.

7 Q. So, even at this point in time you had not yet
8 taken any active steps in the representation of James
9 Jones in in case, correct?

10 A. Yes, I think that is true.

11 Q. Now, Exhibit Number 37 is a letter dated March 11,
12 1987 to Mr. Zimmermann from Mr. McAlpin proposing a
13 settlement of the case.

14 Were you aware that Mr. McAlpin had
15 communicated an offer to Mr. Zimmermann at this point in
16 time?

17 A. At some point in time I became aware that this
18 position had been advocated by Mr. McAlpin. Whether or
19 not it was on or about March 11th or during the trial, I
20 am not certain.

21 I was aware that that offer had been
22 extended.

23 Q. Now, if you look at Exhibit Number 38 it is a note
24 dated 3-15-87 where Mr. Jones indicated that he was
25 relieving Mr. McAlpin of his duties in representing him

1 and then if you will look at Exhibit Number 39 it appears
2 that the court entered an order on March 19, 1987
3 substituting you as counsel for James Jones, correct?

4 A. That's correct.

5 Q. So, up until this point in time you had done
6 nothing active in the case.

7 Is that a fair statement?

8 A. Basically. I had the conversations with Mr.
9 McAlpin but that was pretty much the extent of it.

10 Q. If you look at Exhibit 41, you wrote a letter
11 dated March 24, 1987 to Mr. Zimmermann and in that letter
12 you enclosed your discovery request, correct?

13 A. Yes.

14 Q. All right. Now, it says down here in the fourth
15 paragraph, I do have a copy of a search warrant that was
16 executed on February 20, 1986 and it does indicate that a
17 shotgun and some clothing along with two notebooks and
18 papers, some phone numbers and shotgun shells were
19 apparently seized from the residence at 858 A Kirkwood
20 Avenue.

21 You were aware that items had been seized
22 at this point in time?

23 A. That's correct.

24 Q. At this point in time when you served this
25 discovery request, you were aware that the trial was set

1 for July 6?

2 A. In all probability.

3 Q. In fact, we interviewed you and you said when I
4 became involved I knew I had a very short period of time
5 to get ready for this case?

6 A. Yes. I think I was aware it was set in July.

7 Q. And then if you look over on page two it says --
8 second to the last paragraph on page two -- at this time
9 I do not feel that I have an insanity defense but I am
10 certainly going to seriously look at my client's mental
11 condition and immediately upon ascertaining whether or
12 not I shall have any expert testimony as to the
13 defendant's mental condition, I will notify you.

14 I would welcome an opportunity to sit down
15 and discuss this case with you since it is obviously
16 going to be a complex and difficult case and I think the
17 more items that we can possibly stipulate to and get
18 settled prior to the July trial date would be helpful to
19 all parties?

20 A. Right.

21 Q. And you never did sit down to talk about the case
22 in the manner you suggested in this letter, did you?

23 A. Well, I am not certain of that. I know Mr.
24 Zimmermann and I had several conversations, and I don't
25 recall how lengthy any of them were.

1 But I felt he and I did discuss the case
2 on quite a few occasions.

3 Q. Will you look at Exhibit 43, please. This is not
4 an exhibit that you have personal knowledge of.

5 Exhibit 43 from the prosecutor's file
6 indicates that -- actually I think March 23rd, even
7 though the memo is dated March 25 -- Mr. Zimmermann, the
8 prosecutor, went out and tried to locate Devalle Miller
9 and Devalle Miller was brought down to Tennessee within a
10 month after that.

11 Were you aware that Devalle Miller had not
12 yet been arrested?

13 A. I believe I was.

14 Q. Did you become aware of the occasion when he was
15 arrested and brought to Tennessee in April?

16 A. I believe so, yes.

17 Q. Did you make any effort to contact either Mr.
18 Miller or his attorney about this case?

19 A. I can't recall right now who at that time was
20 representing Mr. Miller. I would not have contacted Mr.
21 Miller. If I had contacted anyone, I would have
22 contacted his attorney.

23 Q. Do you know that Mr. Ross Alderman ultimately
24 represented Mr. Miller?

25 A. That's correct.

1 Q. Did you ever have any discussion with Mr. Alderman
2 about this case?

3 A. I would anticipate probably he and I did have some
4 conversations about the case. We saw each other on a
5 regular basis.

6 I feel certain that we had some
7 conversations about it.

8 Q. Did you ever have a serious meeting where you
9 talked about the case and probed Mr. Alderman for
10 information and talked about possible strategies in the
11 case?

12 A. I doubt that. I think it was pretty clear at that
13 time that probably we did not have concurrent defenses.
14 And Mr. Alderman and I have known each other for a long
15 time.

16 I think my memory is now that I assumed we
17 would probably be going along different paths. There
18 wasn't anything to be gained by any lengthy conversation
19 with Mr. Alderman.

20 Q. Is that an assumption on your part or a question
21 you put to Mr. Alderman?

22 A. I don't recall -- I am sure Mr. Alderman and I
23 discussed it but certainty what I said was an assumption
24 on my part.

25 Q. If you will look at Exhibit 46. This is a letter

1 that Mr. Zimmermann wrote to you on March 30, 1987.

2 He says, I have received a copy of your
3 formal discovery request and advise you we have
4 previously responded to a similar request of the
5 defendant's previous counsel both in an initial response
6 and supplemental response number one.

7 So, Mr. Zimmermann told you here that Mr.
8 McAlpin had received some discovery from the state?

9 A. That's correct.

10 Q. And with regard to inspecting physical items and
11 photographs, please don't hesitate to contact me
12 regarding a convenient time to inspect those items.

13 That is something you did not do. You did
14 not inspect those items, correct?

15 A. That's correct.

16 Q. All right. Then if you look at Exhibit 47 it is
17 supplemental response number three to defendant's request
18 for discovery. It does not have the attachments because
19 the attachments had come off.

20 But they were -- attachments, according to
21 this document, were in the Metropolitan Police Department
22 property and evidence receipts which reflect all property
23 this office was advised were seized as evidence in this
24 cause.

25 This was the first request you received

1 from the state that you received, is that correct?

2 A. Other than the previous letter we referred to.

3 Q. If you will look at Exhibit 50, please. This is a
4 memo to Sumter from you dated April 20, 1987 about two
5 and a half months before trial, correct?

6 A. Yes.

7 Q. And you're saying to Sumter, please see me on the
8 case of James Lee Jones in Fifth Circuit Court. I would
9 like for you to help me try this death penalty case. Do
10 you see that?

11 A. I do.

12 Q. This is the first communication you had with
13 Sumter Camp about helping you in that case, correct?

14 A. In all probability.

15 Q. If you will look at Exhibit Number 51. Exhibit 51
16 is a transcript which we obtained from the prosecutor's
17 file of a tape recorded interview that they conducted of
18 Devalle Miller on April 23, 1987 within a day or two
19 after he was brought to Tennessee from Pennsylvania.

20 Before trial, you were never given a copy
21 of this transcript, were you?

22 A. I don't believe I was.

23 Q. I believe that Judge Kurtz ruled this did not have
24 to be turned over?

25 A. That's correct.

1 Q. But it was turned over at trial as Jencks'
2 material?

3 A. That's correct.

4 Q. If you will turn now to Exhibit 54. This is a
5 memo from you to Sumter dated May 11, 1987. We are now
6 within two months of trial.

7 You say to Sumter, please see me on a case
8 named James Lee Jones. This is a case I do need you to
9 assist me on in trying.

10 At this point in time even though you had
11 previously written Mr. Camp a memo asking for his
12 assistance, as of this memo on May 11th he had not yet
13 gotten involved in the case, correct?

14 A. It would appear that is correct.

15 Q. All right. If you will turn to Exhibit Number 57.
16 Exhibit Number 57 is a memo to the file this is in the
17 prosecutor's file from Weakley Barnard.

18 He is another assistant district attorney
19 in the District Attorney's Office, is that correct?

20 A. That's correct.

21 Q. He was Mr. Zimmermann's co-counsel at the trial in
22 this case, correct?

23 A. That's right.

24 Q. And it talks about an interview with George
25 Daniels. We don't have the date of this memo. So we

1 have inserted it here. If you would look at the second
2 page of that memo.

3 George Daniels was Patrick Daniels'
4 brother. Patrick Daniels was the victim. And the
5 interview memo says this.

6 George Daniels advised me that he would do
7 a little coke every now and then. He stated he and his
8 brother Patrick, the victim, would do -- would sometimes
9 do coke together. He stated his brother sometimes kept
10 coke at his brother's residence.

11 He also stated that his brother would talk
12 about selling coke every now and then but did not like to
13 fool with it much because it had too much liability
14 involved with it.

15 Mr. Daniels also advised that his
16 brother probably sold to several people at the Overnight
17 Company. He mentioned one specifically known to him as
18 Centipede.

19 Were you ever given information by the
20 prosecution that they had learned through the victim's
21 brother that the victim in fact did deal in cocaine?

22 A. No.

23 Q. All right. If you will look at Exhibit Number 58.
24 This is a letter from Mr. Zimmermann to the chief deputy
25 sheriff, Billy Lynch.

1 In this letter he says, Mr. Jones is
2 charged with murder and it appears that in this case the
3 state will be seeking the death penalty against Mr.
4 Jones. Mr. Jones has a history of violent behavior and
5 convicted in '72 for murder of an inmate in a federal
6 correctional institute, and that Mr. Miller's life is in
7 danger and so he is asking the sheriff to keep the two
8 segregated and separated.

9 Were you aware on May 18 or shortly
10 thereafter, within less and month of trial, Mr. Jones had
11 been segregated?

12 A. No, I don't have any memory of that.

13 Q. And then if you will look at the next, Exhibit 59.
14 On May 19, 1987 the prosecution served its notice of
15 intent to impose the death penalty.

16 Now, Mr. Barrett, you knew in the
17 beginning of your involvement in this case that this was
18 a death penalty case, is that right?

19 A. That's correct.

20 Q. Would you look at Exhibit Number 59. 59 is an
21 order entered May 20, 1987 by Judge Kurtz and basically a
22 scheduling order resulting from a pretrial conference
23 that occurred on May 20, correct?

24 A. That's correct.

25 Q. And it says in paragraph two that the pretrial

1 motions shall be heard on Friday, June 5, correct?

2 A. That's correct.

3 Q. But it says in paragraph one that all pretrial
4 motions whether filed by the defense or by the state
5 shall be filed by May 29, 1987, correct?

6 A. That's correct.

7 Q. Exhibit Number 59. That is a letter dated June 1,
8 1987 from you to Judge Kurtz?

9 A. That's correct.

10 Q. And it appears from this letter you missed the May
11 29 deadline for filing pretrial motions?

12 A. That's correct.

13 Q. And you apologized for that and said in your
14 letter, somehow I failed to note this date on my
15 calendar, although there is no question to the fact the
16 pretrial motions were to be filed on that date. In an
17 attempt to have the pretrial motions filed on June 1,
18 1987, I realized a substantial amount of material
19 necessary for the preparation of these motions is with an
20 attorney in Clarksville, Tennessee who along with myself
21 is involved in a court appointed death penalty trial in
22 Clarksville.

23 I have loaned him this material and
24 somehow failed to maintain copies of it in my office.

25 I take it those are the formal motions you

1 used in this case?

2 A. I am sure that is correct.

3 Q. And then Exhibit Number 60 is the motion to compel
4 discovery which was filed by Mr. Zimmermann which asks
5 you to produce any physical or mental examinations or
6 scientific tests made in connection with the case that I
7 intend to introduce as evidence at the trial?

8 A. That's correct.

9 Q. The case is getting ready for trial at this point
10 in time?

11 A. Yes, it is.

12 Q. If you will look at Exhibit Number 62. Exhibit
13 Number 62 is a supplemental response number four to
14 defendant's request for discovery, June 4, 1987, in which
15 they serve on you a one-page report of the FBI regarding
16 soil samples taken from pants and shoes and other items,
17 correct?

18 A. That's right.

19 Q. Now, Exhibit Number 63 are the pretrial motions
20 which you filed dated June 5, 1987. That includes a
21 motion for exculpatory material, a copy with notes
22 indicating the rulings on that, a production of statement
23 of co-defendants which was denied, a motion for list of
24 state's witnesses, a motion to require the state to
25 produce the accused institutional record, notice of

1 defense based on mental disease or defect.

2 Do you see that one?

3 A. I do.

4 Q. And this one says, at this time the defendant
5 James Lee Jones does not intend to rest upon an insanity
6 defense or defense of diminished capacity. While the
7 defense may rely upon his overall emotional condition at
8 the sentencing phase, should we get to a sentencing
9 phase, at this time the defendant does not have any
10 expert testimony or documents that do deal with this
11 defense.

12 Do you see that?

13 A. I do.

14 Q. And at that point in time you had done no
15 investigation or inquired into the potential of a mental
16 state defense either at the guilt phase or sentencing
17 phase, had you?

18 A. Other than probably being aware of the MTMHI
19 report and interviewing Mr. Jones.

20 Q. And then you also filed a motion to disclose
21 information relating to mitigating circumstances and then
22 the last item here was a motion for copy of mental
23 evaluation and records.

24 Again, it is dated June 5, 1987?

25 A. That's correct.

1 Q. At this point in time you had not yet obtained the
2 records from MTMHI?

3 A. Very likely not.

4 Q. And we are almost exactly within one month from
5 the trial date which was July 6, is that correct?

6 A. That's correct.

7 Q. Now, Exhibit Number 64. A memo to Ed Swinger from
8 you dated June 10, 1987. Ed. I want you to go to the
9 Federal Probation Office and talk with probation officer
10 Lewis Trammel on James Lee Jones.

11 Now, are you aware that you were -- Lewis
12 Trammel was is a federal probation officer?

13 A. That's right.

14 Q. Were you aware that within a month or two after
15 the arrest Mr. Trammel went out and visited James Jones
16 at the prison and interviewed him at the prison?

17 A. I don't have a memory of that.

18 Q. And then you go on and say, James Lee Jones is on
19 parol for federal murder. He is getting ready to catch a
20 lot of time on a murder case in state court. Find out if
21 Mr. Trammel and/or the Bureau of Prisons -- I want to
22 know how much time, as soon as possible, James Jones is
23 facing when his federal parol is revoked.

24 Now, this is a memo from Lionel to Ed but
25 it is carbon copied Lionel R. Barrett at the bottom.

1 Can you explain that?

2 A. I just wanted to be sure that the secretary
3 gave me a copy back so I would remember to ask Ed about
4 this.

5 Q. And attached to that is a handwritten note from Ed
6 to you dated 6-10-87 in which he said he talked with Mr.
7 Trammel about James Lee Jones again. I must admit that
8 this is somewhat confusing but he explained to me that
9 should James' parol be revoked he would have to serve the
10 remainder of his life in jail. He said that James'
11 sentence -- I can't read next word -- life and his parol
12 was never ending. I hope this is clear to you because I
13 am not certain about all of this.

14 Mr. Barrett, had you ever interviewed Mr.
15 Trammel about James Jones?

16 A. No, I did not.

17 Q. Did you ever get the Probation Office file on
18 James Jones?

19 A. No, I did not.

20 Q. The next exhibit is Exhibit Number 65. It is a
21 memo from Sumter to Ed with a carbon copy both to Sumter
22 and yourself. Here Sumter Camp your co-counsel is
23 saying, please get Mr. Jones to sign a release for his
24 medical records and then get copies of the psychological
25 evaluation performed at MTMHI or Middle Tennessee Mental

1 Health Institute. If you call MTMHI ahead of time they
2 will be happy to pull the pertinent sections from the
3 record, copy them and have them ready for you when you
4 get there. These records must be gotten ASAP.

5 Do you recall being in a rush to get the
6 MTMHI file within a month of time of the trial?

7 A. That's correct.

8 Q. Now, on Exhibit 67 is the state's response to
9 motion for exculpatory material regarding promises to
10 state's witnesses and in this response the prosecution
11 outlines the agreement or deal that they reached with
12 Devalle Miller the co-defendant, correct?

13 A. That's correct.

14 Q. They say that the State of Tennessee would move to
15 sever Mr. Miller's trial from that of the defendant
16 Jones, that the State of Tennessee would not seek the
17 death penalty against Mr. Miller, that the extent of Mr.
18 Miller's cooperation would be made known to the
19 appropriate sentencing authority.

20 Did you ever give any consideration as to
21 whether you would support or not support a severance of
22 Mr. Miller's trial from Mr. Jones' trial?

23 A. I am sure Mr. Camp and I discussed that issue.

24 Q. But you filed no objection to that motion?

25 A. No. I had no objection to that motion.

1 Q. Now, the next exhibit is Exhibit Number 68, order
2 directing Middle Tennessee Mental Health Institute to
3 produce the defendant's mental and psychiatric records
4 for inspection dated 6-15-87.

5 So is it true that you did not obtain the
6 MTMHI file on James Jones until sometime after this order
7 was entered?

8 A. I think that is correct.

9 Q. Isn't it true, however, that a defendant can get a
10 copy of the file at any time simply by executing a waiver
11 or release?

12 A. I suspect that is correct. Normally it is done by
13 means of a court order.

14 Q. That is not required?

15 A. Probably not.

16 Q. And then Exhibit Number 69 is Mr. Zimmermann's
17 supplemental response number five to defendant's request
18 for discovery and here Mr. Zimmermann attaches the
19 written statement that was signed by James Jones which
20 constituted his confession of the 1972 killing,
21 correct?

22 A. That's correct.

23 Q. So Mr. Zimmermann produced for you this written
24 context sometime around June 16, 1987 within a couple
25 weeks before trial but did not produce for you the other

1 documents he had relating to the 1972 conviction?

2 A. That's correct.

3 Q. Exhibit Number 71. This is a memo from you to Ed
4 dated July 1, 1987.

5 Now this was the Wednesday before the
6 Monday when the trial was to begin, correct?

7 A. That's correct.

8 Q. Ed. I need the psychiatric file back on James
9 Lee Jones. You were Xeroxing part of it to take to
10 Jones. It now appears that we are possibly going to go
11 to trial since the state will not let him enter a plea of
12 guilty and I need the psychiatric file back as soon as
13 possible.

14 Also I think you have some notes about
15 James Lee Jones' past history. We need to start getting
16 all of that together.

17 Also I think it is fair to say that
18 probably between now and Monday including part of this
19 weekend that you and Sumter and I are going to have to
20 spend a lot of time getting ready for this death penalty
21 case since we have a lot of work to do on the case and
22 from Thursday through Sunday we are going to turn this
23 into the James Lee Jones' battleground headquarters. We
24 are going to have to mount an offensive against the judge
25 and District Attorney's Office. We will get coordinated

1 in the next day or so.

2 Okay. At this time you see you are about
3 to go to trial in a couple days.

4 Q. To pick the juror, that's correct.

5 Q. Now, the next exhibit is Exhibit 72. A letter
6 written the same day on July 1st to John Zimmermann and
7 Weakley Barnard, the two prosecutors.

8 Here you start the letter is follows: Mr.
9 Camp and I have continued to review the James Lee Jones'
10 matter and it appears that if this case is to go to
11 trial, we may be compelled to offer some proof as to Mr.
12 Jones' psychiatric status concerning the competency at
13 the time of the commission of the offense.

14 This information has come to us very
15 slowly and is based upon our recent acquisition of the
16 records from the Middle Tennessee Mental Health Institute
17 and conversations with Mr. Jones.

18 At the present time we are not certain
19 this will constitute part of our defense but it may. I
20 do not feel that you in any way have been prejudiced by
21 this since the information we would be utilizing would
22 be that information which is contained in the reports of
23 the Middle Tennessee Health Institute that you already
24 have.

25 Accordingly, please let this serve as our

1 notice under Rule 12 point 2 that there is a possibility
2 this defense may be offered, although I doubt it.

3 At this point you are beginning to
4 consider whether or not to raise some kind of mental
5 state defense at trial?

6 A. Yes. We are discussing it at this time.

7 Q. And then Mr. Zimmermann files a motion, a motion
8 in limine. I am not sure I have the date on that. But
9 that is Exhibit Number 73.

10 There the state basically moves the court
11 to order that you make no mention before the jury that
12 the defendant will rely upon the defense of insanity or
13 mental condition at the time of the offense unless and
14 until the defendant can make a threshold showing of an
15 existence of a mental disease or defect within the
16 defendant at the time of the offense.

17 So, Mr. Zimmermann apparently respond by
18 objecting to your use of your using any insanity or
19 mental defense, is that correct?

20 A. That's right.

21 Q. Now, we went over this exhibit before, Exhibit
22 Number 74. The first part of that are your notes. The
23 first set of notes you have are dated -- looks like
24 10-15-86.

25 That would correspond probably to your

1 first meeting with James Jones?

2 A. I believe so.

3 Q. And then you see down there about a third of the
4 way down there you said something contact until --
5 something -- Percy Quaker, Sara Robert.

6 Do you see that?

7 A. How far down?

8 Q. About a third of the way down. Do you see that
9 one. Do you see Sara Robert there?

10 A. Yes.

11 Q. Sara Robert was James Jones' fiancée up in Chicago
12 before he came down to Nashville.

13 Are you aware of that?

14 A. I recall that, yes.

15 Q. You made no effort to contact her in connection
16 with this case?

17 A. Apparently not.

18 Q. Then it says brother at Fort Campbell, Kentucky.

19 So it appears that -- you have Lewis
20 Trammel his federal parol officer.

21 So it appears in this that James Jones
22 gave you information about people that he wanted to
23 contact about the case, is that correct?

24 A. That's correct.

25 Q. People that could give you information about his

1 background.

2 All right. The next page you will see in
3 the middle of the page reference to Boyd, Beard. Do you
4 see that?

5 A. Yes.

6 Q. So it appears that somewhere along the line Mr.
7 Jones gave you information about them, correct?

8 A. That's correct.

9 Q. And then Lewis Trammel is up at the right-hand
10 corner there, correct?

11 A. Yes.

12 Q. The next page you will see reference -- in the
13 middle of the page -- to Nashville Baptist Publishing
14 House.

15 Do you see that?

16 A. Yes.

17 Q. And then the next page is a list of names
18 apparently given to you by Mr. Jones. Is that a fair
19 statement?

20 A. I believe it came probably from Mr. Jones.

21 Q. You say call Susi Bynum, William Beard and
22 interview Allen Boyd.

23 Did you ever interview William Beard in
24 this case?

25 A. Yes, I believe I did. I don't have -- I believe I

1 did speak to Mr. Beard prior to trial. I can't recall
2 specifically what he said. But I do recall some contact
3 with Mr. Beard.

4 Q. Did you ever talk to Mr. Boyd before the trial?

5 A. Probably not before the trial. Unless they
6 may have come together for some reason, I believe I
7 spoke with Mr. Beard before trial and Mr. Boyd at the
8 trial.

9 Q. Did you take any notes of your conversations with
10 either of these gentlemen?

11 A. I doubt it. If they are not in here, I didn't.

12 Q. But you subpoenaed both them to the trial?

13 A. I believe I did.

14 Q. And if you will look at the next page, the next
15 page is a hand written list of names that is in Mr.
16 Jones' handwriting, correct?

17 A. I believe so.

18 Q. And these are names of people that you might
19 contact in connection with the case, correct?

20 A. Apparently, yes.

21 Q. And there is the name Reverend George Coleman.
22 You never contacted him?

23 A. I don't believe so.

24 Q. Reverend Lawson, you never contacted him?

25 A. I don't think so.

1 Q. Reverend Robert McLoulen. You never contacted
2 him?

3 A. That's correct.

4 Q. Dr. Bukemia. You never contacted him?

5 A. That's correct.

6 Q. Brother Preston and then Gibson. I am not sure I
7 can figure that out.

8 You never contacted that individual?

9 A. I don't believe so.

10 Q. And brother William Beard which we talked about,
11 sister Gail Hughes which we talked about, sister Sheila
12 Hughes.

13 You never contacted her, did you?

14 A. I don't believe I did.

15 Q. Sister Brenda Winfield. You never contacted her?

16 A. I don't think so.

17 Q. Sister Maryum Shakir, you never contacted her?

18 A. No.

19 Q. Sister Shirley Gross at NBPB, Nashville Baptist
20 Publishing Board.

21 You never contacted her?

22 A. No.

23 Q. Next page appears to be a list of things to do
24 that appears to have been prepared by you shortly before
25 trial?

1 A. Yes.

2 Q. And the next page is the last item that says
3 subpoena Dr. Marshall for sentencing.

4 It is true that you subpoenaed Dr.
5 Marshall to the trial? Is that correct?

6 A. I believe I did.

7 Q. And then the next page are mitigation witnesses
8 and you listed Allen Boyd and William Beard and others on
9 that list, correct?

10 A. That's correct.

11 Q. And then another list of things to do, correct?

12 A. That's right.

13 Q. Now, the next page are notes you took and they are
14 dated 7-6, is that correct?

15 A. That's correct.

16 Q. The trial started on July 6, 1987, correct?

17 A. Yes.

18 Q. Would they be notes you took on the day of trial?

19 A. They very well may have been. I don't recall.
20 They seem to have the date of July 6.

21 Q. Are these notes you took of an interview with
22 James Jones?

23 A. It appears that they were from Mr. Jones.

24 Q. And so is it fair to say that prior to this point
25 in time the only other interviews you had where you took

1 notes with James Jones are the interviews that resulted
2 in the notes starting with 10-15-86 and two other pages
3 of notes besides that?

4 A. The next page, 236, looks as though it may be July
5 1st and there may be some more. But July 1st it appears
6 to be some additional notes that apparently were -- may
7 have been taken of my interview with Mr. Jones.

8 Q. We couldn't read that date. Is that July 1st or
9 July 11th?

10 A. It appears to me to be July 1st.

11 Q. And then in that set of notes you will see about
12 halfway down the first paragraph there is a reference to
13 SE Ministry Gospel. Something like that. Do you see
14 that?

15 A. That's correct.

16 Q. And then these notes appear to be more extensive
17 in nature.

18 Is it fair to say, Mr. Barrett, that July
19 1st, 1987 was the first interview you had with Mr. Jones
20 where you took extensive notes about the circumstances
21 surrounding the offense in this case?

22 A. As far as extensive notes, that would probably be
23 correct.

24 Q. Would you look to Exhibit 75, please. As I
25 understand it the jury selection began on Monday, July 6

1 and this memo from you to Gwen is dated July 9th which
2 would be Thursday, the fourth day of jury selection,
3 correct?

4 A. Right.

5 Q. Would this memo be drafted in the evening after
6 court that day?

7 A. Oh, it could have been done in the morning
8 preceding. My belief it was probably done the morning of
9 July 9.

10 Q. It says, Gwen, please call Gail Hughes at the
11 Nashville Urban League and tell her that the odds are 99
12 out of a hundred that James Jones is going to be
13 sentenced to death next week. Tell her I would like for
14 her and some other people from the Nashville Urban League
15 to consider testifying in James Jones' behalf and that
16 Mr. Swinger from my office will be available this weekend
17 or tomorrow to interview her about what she can do as far
18 as helping James Lee Jones.

19 Now, before this point in time is it
20 true you never discussed with Gail Hughes or anyone else
21 at the Nashville Urban League the possibility of
22 testifying on behalf of James Jones' behalf at a
23 sentencing hearing?

24 A. I believe I discussed that with Gail Hughes but as
25 far as other people, that is probably correct.

1 Q. Before this July 9th memo, you had not contacted
2 anybody else at the Nashville Urban League about helping
3 out in the James Jones' case, correct?

4 A. That's correct.

5 Q. Now, when James Jones came to Nashville in
6 February of 1984, he was at the halfway house in --
7 called Opportunity House, correct?

8 A. Right.

9 Q. He was there until I believe March or April of '84
10 and during that time he took classes at the Nashville
11 Urban League, is that correct?

12 A. That's correct.

13 Q. That was the connection of the Nashville Urban
14 League had with James Jones?

15 A. I believe that is true.

16 Q. And then when he left the Opportunity House, he
17 moved into an apartment and began working at the
18 Nashville Baptist Publishing Board under Allen Boyd?

19 A. That's right.

20 Q. Will you look at Exhibit Number 76, please. Do
21 you see that?

22 A. Yes.

23 Q. That is a motion to declare defendant indigent.
24 It is dated July 9, 1987.

25 This was the Thursday of the week of jury

1 selection, correct?

2 A. That's correct.

3 Q. And in this motion, this is a motion asking the
4 court to declare the defendant indigent so that you could
5 be court appointed counsel in the case, correct?

6 A. No. The purpose I believe of this motion was for
7 the possibility of having, I believe, the expert
8 psychiatric testimony.

9 Q. In order to do that you would have to first get
10 him declared indigent and then you would have to be
11 appointed counsel?

12 A. Yes, that is true.

13 Q. That is the first step?

14 A. That's right.

15 Q. And then the next page is the ex parte motion for
16 expert funds in which you were going to ask the court to
17 give you the money to hire a psychiatrist to help you in
18 the case?

19 A. That's correct.

20 Q. In trying to possibly formulate an insanity or
21 other kind of mental state defense in the guilt or
22 sentencing stage of the case?

23 A. That's correct.

24 Q. In paragraph four you cite the fairly rent
25 situation of the Supreme Court case at that time Ake v

1 Oklahoma?

2 A. That's correct.

3 Q. That case stands for the proposition that a
4 defendant who has a possible mental health defense has a
5 Sixth Amendment right to psychiatric consultation?

6 A. Yes, that is true.

7 Q. And then the next document a couple pages later,
8 certificate -- an affidavit you signed, correct?

9 A. Yes, sir.

10 Q. And paragraph two of that affidavit says affiant
11 was retained by the defendant's family to represent him
12 in this case. In view of the low income of the family
13 the agreed upon fee in the case was \$15,000. Affiant
14 accepted a retainer of \$5,000 toward that fee.

15 Since the payment of the retainer the
16 individuals involved have refused to pay the remainder of
17 the fee.

18 Do you remember that?

19 A. Yes.

20 Q. Do you remember recently I asked you what you
21 meant by the defendant's family in paragraph two of this
22 affidavit?

23 What did you tell me?

24 A. Well, that was basically a reference to Gail
25 Hughes and any friends or supporters of Gail Hughes.

1 I didn't mean his mother or father or
2 brother or sister family, it was using a generic sense.
3 That primarily referred to Gail Hughes.

4 Q. The next page is another affidavit. And I take it
5 the first affidavit, the one we just talked about which
6 is five paragraphs long, on one page the date stamp is
7 579 and that was the affidavit to be filed in connection
8 with the motion to declare defendant indigent.

9 And then the next affidavit which is a
10 longer affidavit, six paragraphs covering part of a
11 second page, was the affidavit to be filed ex parte in
12 connection with the motion for expert funds, correct?

13 A. Apparently so.

14 Q. In the first three paragraphs are basically the
15 same as the other affidavit?

16 A. That's correct.

17 Q. Paragraph four it says this. The defendant is
18 incarcerated and has been incarcerated since his arrest
19 in this case and it is affiant's belief he is without
20 funds to pay the remainder of the agreed upon fee in this
21 case.

22 Only recently has it become apparent that
23 private psychiatric screening is necessary to adequately
24 present Mr. Jones' defense at the sentencing hearing.
25 The records presently before the court indicate the

1 necessity for such an evaluation.

2 In order to fully and competently complete
3 the trial of this case, certain funds need to be expended
4 in the preparation of the case which are unavailable due
5 to the defendant's indigency.

6 Do you recall drafting that language?

7 A. I do.

8 Q. Now, Mr. Barrett, these motions were never filed
9 with the court, were they?

10 A. I believe that is correct.

11 Q. You prepared these motions on the evening of July
12 9th, is that correct?

13 A. Either is the morning or evening, if you like.

14 Q. As we said, July 9th was the Thursday of the week
15 of jury selection, correct?

16 A. That's correct.

17 Q. And the actual guilt phase of the trial started
18 the following Monday, July 13?

19 A. That's correct.

20 Q. And the jury selection continued through Friday of
21 that week through the 10th of July, correct?

22 A. I believe it did.

23 Q. On the last day of jury selection you were not
24 present. Mr. Camp took over the work for that day?

25 A. Yes.

1 Q. You had other things to do on that Friday, is that
2 correct?

3 A. I don't recall. I believe Mr. Camp did the
4 windup, the last part of the individual voir dire.

5 Q. Now, Mr. Barrett, at this stage in the game it
6 wouldn't have been possible for you to obtain psychiatric
7 assistance before the guilt phase of trial began the next
8 Monday?

9 A. It would be virtually impossible. Although my
10 memory is that we were more concerned with the sentencing
11 phase.

12 Q. That started July 15th, the following Wednesday?

13 A. That's right.

14 Q. So you were contemplating at this point in time
15 going to the court and asking for funds and hiring a
16 psychiatrist or psychologist to assist you within that
17 three or four day period?

18 A. Mr. Camp and I had discussed this. As to why they
19 were not filed, I know we did not forget to file them.
20 Apparently I made a tactical decision either that this
21 was not to be done or that for some reason I thought -- I
22 elected not to file the motion.

23 Q. Would you look at Exhibit Number 78.

24 This is letter dated July 15, 1987 from
25 you to Mr. Zimmermann. July 15th was the Wednesday the

1 guilt phase of the trial which was a two day event which
2 occurred on Monday, July 13th and Tuesday, July 14th.
3 And then the sentencing phase of the trial occurred on
4 Wednesday, July 15, 1987.

5 This letter is dated July 15, 1987 and it
6 says, as Mr. Camp and I have prepared our case for the
7 sentencing hearing, it does appear that there will be a
8 strong probability that you will be called as a witness to
9 testify as to the fact that your office does have
10 knowledge that Mr. James Lee Jones was in some way
11 affiliated with an organization possibly called the
12 Southeastern Church of Gospel Ministry that also had as
13 members Mr. William Beard and Mr. Allen Boyd.

14 As you may recall last Thursday afternoon,
15 which was during jury selection, you did request that the
16 jury list be taken from Mr. Camp and myself and Mr. Jones
17 so that members of this organization could not contact
18 the black jurors. On that occasion, you did make a
19 statement that this organization had come to your
20 attention.

21 Do you recall that letter?

22 A. I do.

23 Q. Do you recall what occurred the week before that
24 you were referring to in this letter?

25 A. At some point in time during the jury selection

1 process -- it may have been at the end of the first
2 day -- I believe the court was adjourning and Mr.
3 Zimmermann moved that the list of potential jurors that
4 we were routinely provided be returned that night to the
5 Clerk of the Court so that we would not have access to it
6 during that evening, or words to that effect.

7 Q. Let me see if I understand this. The week --
8 before the end of the jury selection Mr. Zimmermann came
9 up to you and Mr. Camp, correct?

10 A. That's correct.

11 Q. He said, I want you to give me your jury list, is
12 that correct?

13 A. Yes.

14 Q. This is the list you use when you select a jury,
15 it has the names of the jurors and whatever other
16 information you might have about them, correct?

17 A. That's correct.

18 Q. That is a list provided to you by the court that
19 you use during the jury selection process?

20 A. Yes.

21 Q. Mr. Zimmermann asked you to turn that list over to
22 him so you would not continue to have that list after the
23 jury selection was concluded, is that correct?

24 A. Yes, that is correct.

25 Q. He wanted you to turn that over because he was

1 concerned about the jurors' safety or possible jury
2 tampering?

3 A. That seemed to be the import of what he was
4 saying.

5 Q. He was saying that information had come to him
6 about the Southeastern Church of Gospel Ministry that
7 also had as members Mr. William Beard and Mr. Allen Boyd,
8 correct?

9 A. That's correct.

10 Q. That is what he told you on that day in court?

11 A. That's correct.

12 Q. In your years as a criminal defense attorney have
13 you ever had occasion either before or since this
14 occasion when the prosecutor came to you at the end of
15 jury selection and asked you for your jury list?

16 A. No, I have not.

17 Q. And so you thought that was a highly unusual
18 event?

19 A. Yes. I recall that Mr. Camp and I had very strong
20 feelings about that, basically indicated that we did not
21 intend to comply with that request.

22 Q. In fact you were upset, extremely upset by that
23 request?

24 A. Well, I think certainly we found it to be
25 offensive. I know there were pretty strong words

1 spoken.

2 Q. Mr. Barrett, did Mr. Zimmermann tell you what the
3 source of this information was that he had obtained about
4 the Southeastern Church of Gospel Ministry?

5 A. No. I don't recall any specific information being
6 given.

7 Q. Will you look at the next exhibit, number 79.
8 Exhibit number 79 is a transcript of something that
9 occurred on the 15th of July right at the beginning of
10 the day that was going to be the day of the sentencing
11 hearing, correct?

12 A. That's correct.

13 Q. Have you read through this portion of the
14 transcript?

15 A. Yes, I have reviewed it.

16 Q. Does this refresh your recollection of what Mr.
17 Zimmermann told the court at that time in response to
18 that?

19 A. It does.

20 Q. Now, turn to Exhibit 84, please. Exhibit 84 is a
21 letter that you received from the Clerk's Office
22 addressed to you and Mr. Camp which had attached to it
23 the Rule 12 form that was filled out by the judge. Do
24 you recall that?

25 A. Well, I recall -- I see what it is, yes.

1 Q. And what is a Rule 12 form? Can you tell us that?

2 A. Basically this is a form that I guess exclusively
3 in capital cases to be filled out by the trial judge with
4 assistance of counsel to turn in to the Supreme Court so
5 they can keep some uniform records of death penalty
6 cases.

7 Q. Did you ever respond to this request for
8 information concerning the Rule 12 form?

9 A. I don't have any memory whether I did or did not.
10 Certainly these are fairly routinely done in all death
11 penalty cases.

12 Q. If you will look at -- I don't know what page it
13 is. It has a date stamp 48 at the right hand column.
14 They are not numbered sequentially. They are after you
15 get to 43.

16 Do you see page 48?

17 A. Yes.

18 Q. 48 talks about the offenses, prior convictions.
19 And the information under paragraph 23 is not accurate,
20 is it assault with a dangerous weapon, June, 1972.

21 He was not convicted with assault of a
22 dangerous weapon in June, '72?

23 A. No, my memory that would be early --

24 Q. Murder in the second degree, December, 1970. That
25 is not when he was convicted of murder?

1 A. No, that was '72, I believe.

2 Q. And you're not aware of burglary, second degree?
3 That wasn't used in the case, was it?

4 A. That's correct.

5 Q. Now, would you turn to Exhibit Number 85. Exhibit
6 Number 85 is a memo from you to Sumter dated August 26,
7 1987?

8 A. That's correct.

9 Q. This memo was written a couple months after the
10 trial and after James Jones got the death penalty but
11 occurred before the sentencing hearing on the other
12 charges, correct?

13 A. That's right.

14 Q. There was going to be a subsequent sentencing
15 hearing.

16 It says, Sumter, you will get a copy of
17 communication from James Lee Jones saying that he thinks
18 he is going to get the Nobel Peace Prize. I think he is
19 probably crazy. I think we should move to have him
20 psychiatrically evaluated prior to the sentencing hearing
21 in view of the United States Supreme Court decision that
22 you cannot execute a person that is crazy.

23 I also think in the sentencing provision
24 in the code there is some indication that a person can be
25 psychiatrically evaluated.

1 We need to get in done as soon as
2 possible. I would appreciate it if you could prepare the
3 paperwork.

4 Do you recall that memo?

5 A. Yes, I do.

6 Q. And did you or Mr. Camp take any steps at this
7 point in time to obtain a psychiatric examination or
8 evaluation of James Jones?

9 A. I don't believe we did.

10 Q. Now, you will see Exhibit Number 86, a letter
11 dated August 27, 1987 from you to Mr. Jones. It appears
12 from this letter that you had been receiving some
13 complaints from Mr. Jones about how you had handled the
14 case or were handling the case, is that correct?

15 A. I don't have any independent memory. The letter
16 seems to indicate that he had a question or some
17 disagreement with something that may have been said
18 during the closing argument, which was a standard
19 argument in a death penalty case, that we could not
20 condone the acts, et cetera. But that appears to be the
21 thrust of the letter.

22 Q. Now, if you will look at Exhibit Number 87, letter
23 dated -- memo dated October 15, 1987 from you to Sumter
24 Camp.

25 It appears that in that memo you are

1 telling Mr. Camp that you want him to assume the
2 responsibility for preparing a motion for new trial in
3 this case.

4 Is that your recollection of what
5 occurred?

6 A. Yes. Mr. Camp, as I recall, kept pretty complete
7 notes during the trial while I conducted the trial. That
8 is the reason I asked Mr. Camp to follow-up on that.

9 Q. If you will look at Exhibit Number 88.

10 And in October of 1987 you and Mr. Camp
11 did file a motion at that time that defendant be declared
12 indigent for appellate purposes?

13 A. That's correct.

14 Q. This is first time you went to the court with a
15 motion to declare James Jones indigent?

16 A. That's correct.

17 Q. This motion was granted?

18 A. That's correct.

19 Q. If you will look at Exhibit Number 91. Exhibit
20 91 is a letter dated December 1, 1987 from you to Mr.
21 Jones.

22 In the fourth paragraph you say I would
23 suggest that if you do have any doubt of Mr. Camp's and
24 my desire to help you, immediately let us know so that
25 other counsel can be appointed to represent you.

1 By this point in time it was beginning to
2 become clear to you that you and Mr. Jones did not have a
3 good relationship, correct?

4 A. I am not sure I would say we didn't have a good
5 relationship. Certainly this would indicate there is
6 some question and we are discussing whether or not Mr.
7 Camp and I would continue to represent him.

8 Q. Will you turn to Exhibit Number 93.

9 Exhibit 93 is the transcript of the
10 sentencing hearing for Devalle Miller, the co-defendant
11 that testified against Mr. Jones in Mr. Jones' trial?

12 A. Yes.

13 Q. You did not attend that sentencing hearing, did
14 you?

15 A. No, I did not.

16 Q. Mr. Jones was not represented at that sentencing
17 hearing, was he?

18 A. Well, Mr. Jones would not be represented at
19 that sentencing hearing because it was a separate
20 proceeding.

21 Q. Okay.

22 MR. MACLEAN: Your Honor, could I take a
23 short break at this point?

24 THE COURT: All right. We will take a
25 ten-minute break.

1 (Whereupon, the Court was in recess.)

2 THE COURT: All right. We are continuing
3 with the direct examination of Mr. Barrett. You were
4 talking about Exhibit 93 or somewhere around there.

5 MR. MACLEAN: Right.

6 Q. Mr. Barrett, do you remember when I interviewed
7 you last summer and you made this statement?

8 I knew I was taking the case on short
9 notice. If I had more resources, I would have done
10 more.

11 Does that sound like a fair statement?

12 A. Yes, that is correct.

13 Q. And I think you testified in the post conviction
14 proceeding and also told us at the guilt phase your
15 strategy was basically to discredit Devalle Miller, to
16 try to get the jury to come back with second degree
17 murder rather than first degree murder?

18 A. That's correct.

19 Q. Impeach his credibility as a witness. That was
20 your strategy?

21 A. That's correct.

22 Q. And at the sentencing phase your strategy was
23 described by you in the post conviction hearing as
24 follows: Quote. It was just simply hope that in this
25 particular case that Mr. Jones and his wife could somehow

1 along with closing argument convince the jury that his
2 life should be spared. It was in essence a strategy
3 based upon almost principles of mercy and humanity.

4 Do you remember testifying to that?

5 A. That sounds correct.

6 Q. Do you remember telling me last summer of all
7 the death penalty cases I have had, I had the most
8 difficult time in this case forming a unified theory of
9 the case?

10 A. That's correct.

11 Q. Mr. Barrett, would you agree that the voir dire of
12 a case, of a capital case is perhaps the most important
13 part of the case?

14 A. No question about that.

15 Q. Not only because that is where you select your
16 jury but also where the jury gets its first impression of
17 the case?

18 A. That's correct.

19 Q. And the opening statement is also one of the
20 important parts of the case, correct?

21 A. I don't attach as much significance to an opening
22 statement as some attorneys do. Certainly it is a
23 significant part of the trial.

24 MR. MACLEAN: Can I approach the witness?

25 THE COURT: Yes.

1 Q. I just handed you some excerpts from the trial and
2 I would like to make this Exhibit Number 131.

3 THE COURT: 131.

4 Q. Mr. Barrett, 131 contains three fairly short
5 excerpts from the trial. The first excerpt is -- and I
6 cut it off when I copied this, the page numbers on the
7 first two pages. But this is the transcript of your
8 opening statement to the jury.

9 Let me read that into the record. This
10 was at the beginning of the guilt phase of the trial.

11 THE COURT: Are you going to read the
12 whole opening statement?

13 MR. MACLEAN: No.

14 THE COURT: Because I have read it.

15 Q. Do you recall that was your opening statement?

16 A. Yes, I do.

17 Q. And then the next part is 1806 through pages 1808
18 of the transcript which is Mr. Sumter Camp's opening
19 statement to the jury in the sentencing phase.

20 Do you recall that is the the opening
21 statement?

22 A. That's correct.

23 Q. Now, the next excerpt -- let me go back to the
24 sentencing phase. If you look at the bottom of page
25 1807, the paragraph that starts at the very bottom, Mr.

1 Camp argued to the jury; I expect you will hear during
2 the phase of the trial the testimony of James Jones. And
3 you will also hear from his wife Susan. You will hear
4 the testimony of several of their friends and
5 acquaintances, people who knew James at work, the
6 minister who married them, I believe, and other testimony
7 about James Jones as a man and as a human being.

8 Do you recall when Mr. Camp made that
9 statement to the jury in the opening of the sentencing
10 phase?

11 A. Yes. After reading it, I do.

12 Q. At that point in time you had not interviewed any
13 potential friends or acquaintances or people that knew
14 James at work or the minister that married them to
15 testify at the sentencing phase, had you?

16 A. Other than Gail Hughes.

17 Q. And you did not put any of those people on the
18 stand to testify at the sentencing phase?

19 A. That's correct.

20 Q. And the sentencing phase occurred in one day, it
21 was the same day when this opening was made, correct?

22 A. I think so.

23 Q. If you look at the next page it is page 198 of the
24 trial transcript and it is a portion of the voir dire of
25 one of the jurors, Alice Stoddard, that ended up serving

1 on the jury.

2 You asked her the following question:

3 One of the mitigating factors in the
4 statute is the fact of a person who is convicted of a
5 crime may have been acting at the time the crime was
6 committed under extreme mental or emotional disturbance.

7 You go on and the next question you start
8 off by asking, there might be a psychiatrist or
9 psychologist or a mental health expert that would testify
10 at the sentencing phase in any case, not just this case,
11 but in any case.

12 You ask whether she could listen to that
13 kind of testimony and consider that in the sentencing
14 deliberation, correct?

15 A. That's correct.

16 Q. At the time you asked this question of this juror,
17 you did not have a psychiatrist or psychologist lined up
18 to testify in the case?

19 A. That's correct.

20 Q. And you asked this kind of question of virtually
21 all the jurors voir dired in this case?

22 A. We normally do in most death penalty cases, that
23 is correct.

24 MR. MACLEAN: May I approach the witness?

25 THE COURT: All right.

1 THE COURT: I want to clear up any
2 confusion we have. I believe the last exhibit should be
3 Exhibit 132 rather than 131.

4 Any disputes about that?

5 MR. MACLEAN: I am glad you mentioned
6 that. What is 131.

7 THE COURT: It's the compilation of the
8 records from the prior convictions.

9 MR. REDICK: I think that is the record
10 from Mr. Zimmermann's file.

11 THE COURT: It starts with a motion for
12 psychiatric examination and goes on to the Richmond,
13 Virginia transcript.

14 MR. MACLEAN: I didn't write that down.

15 THE COURT: I think that is 131.

16 MR. MACLEAN: Right. And 131 --

17 THE COURT: Is the transcript of the
18 opening statement and voir dire.

19 MR. MACLEAN: Thank you.

20 Q. All right. Mr. Barrett, you would agree, wouldn't
21 you, a death penalty case is difficult, death is
22 difficult?

23 A. That's correct.

24 Q. And you are aware that the Tennessee Association
25 of Criminal Defense Lawyers back in 1985 prepared a book

1 to use as a resource manual for attorneys, defense
2 attorneys that handle capital cases?

3 A. Yes. I was on the editorial board of that.

4 Q. And you would agree that the descriptions given in
5 this manual for how a death penalty case should be
6 defended set the standards for death penalty
7 representation for defense lawyers?

8 A. I would think generally that is true. Defense
9 lawyers may have some deferring opinions on certain
10 issues. Certainly I think as a whole this is certainly
11 accurate.

12 Q. I am going to show you now a Tennessee Law Review
13 article from the summer of 1984. It is at volume 51
14 Tennessee Law Review, page 681, an article called
15 Defending Life in Tennessee Death Penalty Cases by Roy
16 Brasfield Herron. Let me show that to you, if I may.

17 Mr. Barrett, that article was published back
18 in 1984. You were familiar with that article when it was
19 published, is that correct?

20 A. I am familiar with the article and also familiar
21 with Mr. Herron.

22 Q. That also sets forth the standard for
23 representation of capital defendants in Tennessee?

24 A. I am not certain I would agree with that.

25 MR. MACLEAN: Your Honor, I would like

1 these introduced in evidence as Exhibits 133 and 134
2 respectively.

3 THE COURT: The manual will be 133 and
4 article will be 134.

5 MR. MACLEAN: Your Honor, that is all.

6 THE COURT: Is that the same Roy Herron
7 that voted to impeach Judge Nixon on the state senate?

8 MR. REDICK: I don't know if he did vote
9 but I wouldn't be surprised.

10 THE COURT: Okay. Mr. MacLean, are you
11 finished with direct?

12 MR. MACLEAN: Yes, sir.

13 THE COURT: Mr. Baker, do you want to get
14 started? I would like to continue a little further today
15 but if you feel you need more time --

16 MR. BAKER: Probably just press forward.

17 THE COURT: I wanted to make sure you feel
18 like you have had adequate time to consider things.

19

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25

EXAMINATION OF LIONEL BARRETT

BY MR. BAKER:

Q. Mr. Barrett, I refer you back to collective Exhibit 74.

Do you have that in front of you?

A. Yes.

Q. Turn to page 236, I believe.

A. Yes, sir.

Q. Those as you testified to earlier were notes from an interview with Mr. Jones, is that correct?

A. It appears to be, that is correct.

Q. Is that the first time you had talked to Mr. Jones about his case?

A. No, it was not.

Q. This was just the first time you had some detailed notes of your conversation?

A. That's correct.

Q. Also you had people in your office helping you in this case, correct?

A. Yes. Mr. Swinger and Mr. Camp particularly.

Q. Mr. Swinger is Ed Swinger?

A. That's correct.

Q. He was a law clerk?

A. He was a law clerk. He is an attorney now. At that time he was a law clerk for our firm.

1 Q. What was he helping you to do in this case?

2 A. I think primarily communicate with Mr. Jones and I
3 believe take messages to Mr. Jones when I could not be
4 there.

5 I don't recall specifically but Mr.
6 Swinger was a law clerk and we asked him to do a wide
7 variety of things.

8 Q. Was it the practice of your office then that you
9 typically did not request private investigative agencies
10 or private investigative funds from the court?

11 A. That's correct.

12 Q. You used your internal staff or your attorneys?

13 A. That's correct. I have probably had a few cases
14 when a private investigator has been used.

15 Different law firms, attorneys, do things
16 differently. I generally do not use a private
17 investigator.

18 Q. Referring you back to those notes, that Exhibit 74
19 at page 236. I want to go through with those briefly. I
20 won't go through everything.

21 If you will look down on the first page
22 there it says -- do you see the part it says agreed upon
23 a war, bloody blood bath?

24 A. How far down is that, please?

25 Q. About seven lines down from the top.

1 THE COURT: Which date stamp?

2 MR. BAKER: 236.

3 A. Yes.

4 Q. Can you tell us what that is referring to? Do you
5 see the line?

6 A. Yes. I reviewed it.

7 Q. Can you recall what that note reflects?

8 A. I am sorry. Could you repeat the question,
9 please.

10 Q. Do you recall what that note reflects?

11 A. The notes that we are referring to on page 236?

12 Q. Yes. Your Honor -- I mean, Mr. Barrett. The part
13 where it says agreed upon a war, bloody blood bath?

14 A. This as I recall was some notes that I took from
15 Mr. Jones in which he was, I believe, describing to me
16 his view of what had happened and circumstance --
17 circumstances surrounding the Southeastern Ministry
18 Gospel group we referred to.

19 Q. If you will turn the page to 237, the last
20 paragraph. Called Miller up. Same day Sunday.

21 A. Yes, sir.

22 Q. I can't read the next word. It says Miller, I am
23 with you. He had three children. No discomfort.

24 Do you recall what he is telling you
25 there?

1 A. Let me read just a moment, please. I am familiar
2 with the notes. I am not sure I could categorize it as
3 to any particular category or message. It basically --
4 the notes seem to some extent to speak for themselves.
5 Some items are pretty clear.

6 Parol, not supposed to have a weapon.
7 Heroic thoughts. Most great men may be out of the
8 penitentiary. Nobody accepted me or loved me.

9 Q. Will you refer back up where he said he had three
10 children.

11 Do you see that line?

12 A. Which one?

13 Q. Second line on the first paragraph. He had three
14 children?

15 A. I don't want to speculate as to what that may have
16 meant. I am not sure whether he is referring to Miller
17 or possibly to the victims. Right now I am not certain
18 what the three children was.

19 Q. If you testified at your post conviction hearing
20 at page 162 that, quote, he then called Miller up
21 apparently on the same day which was Sunday, that he told
22 Miller that he was with him, that although there were
23 three children there that maybe something should be done.
24 The next day we talked about -- and that is the end of
25 the answer.

1 If that was your statement then do you
2 have any reason to doubt that statement today?

3 A. No. If that was the testimony I gave at the
4 earlier hearing, that was certainly, I guess, my belief
5 at that time.

6 Q. Your belief is that he had told Miller prior on
7 that Sunday that there would be possibly three children
8 there?

9 A. That very well may be. Today I am not absolutely
10 certain that that is what it meant. Certainly that could
11 be.

12 Q. If you will look at page 238 of the same exhibit,
13 the last section.

14 Do you see it starts off, drugs and then
15 about the fifth line down, I didn't know dead until next
16 day. TV. Norma gave information?

17 A. Yes, I recall that.

18 Q. Is that a statement from him indicating that he
19 did not know the victim was dead until the next day when
20 he saw it on TV or somebody saw it on TV and Norma gave
21 him the information?

22 A. I recall that, yes.

23 Q. That is how you recall it. And he goes on, I am a
24 hero not a villain?

25 A. That is what my notes say, yes.

1 Q. That was with your interview of him in whatever
2 date this was in July, I believe you said, '87?

3 A. Yes.

4 Q. Mr. Barrett, you have been in criminal practice
5 for quite a long time, isn't that true?

6 A. Yes, I have.

7 Q. It is my understanding you graduated from
8 Vanderbilt in 1966?

9 A. I got my law degree from Vanderbilt in 1966 and
10 served four years in the Judge Advocate General, United
11 States Army and then I came back into private practice
12 in 1970.

13 Q. And your practice since that time has been
14 primarily criminal defense?

15 A. Yes. It has always been predominately, if not
16 exclusively, criminal defense. Certainly the latter
17 years.

18 Q. That is true today as well?

19 A. Yes.

20 Q. About how many capital cases have you tried?

21 A. I believe approximately in the area of 12 to 15.

22 Q. At the time of Mr. Jones' trial, do you recall
23 about how many you tried?

24 A. No. I can't say. I would think that at least --
25 probably at least seven or eight.

1 Q. You are also a past president of the Tennessee
2 Association of Criminal Defense Lawyers?

3 A. That is correct.

4 Q. And you have served on the death penalty section
5 of the National Association of Criminal Defense Lawyers?

6 A. Yes.

7 Q. And you have also been involved in the Nashville
8 Bar and other legal associations?

9 A. Yes, Nashville Bar Association, Tennessee Bar
10 Association, as you mentioned, National Association of
11 Criminal Defense Lawyers.

12 Q. You indicated at your post conviction hearing that
13 you had spoken to Allen Boyd on several occasions.

14 Do you recall those conversations?

15 A. I recall speaking to Allen Boyd specifically on
16 one occasion and it seems that there may have been one
17 other occasion that I spoke either to Mr. Boyd and/or Mr.
18 Beard.

19 But I would not think I spoke to Allen
20 Boyd on more than two occasions.

21 Q. Now, you also testified at your post conviction
22 hearing that there were not many people that were willing
23 to testify for Mr. Jones.

24 Is that your memory?

25 A. That is my memory, yes.

1 Q. And Gail Hughes was assisting you to track down
2 people to testify for him?

3 A. Yes. I had asked Ms. Hughes to assist us in that
4 phase of the case.

5 Q. Do you recall anyone other than Mr. Jones' wife
6 that was willing to testify for him in the sentencing
7 phase?

8 A. No. I don't recall anyone other than the
9 witnesses we produced.

10 Q. Now, at your post conviction hearing you also
11 testified that you recalled Dr. Marshall from Middle
12 Tennessee Mental Health Institute being present at a
13 portion of the trial?

14 A. I recall subpoenaing Dr. Marshall. I had known
15 Dr. Marshall I believe possibly on some other occasions.
16

17 I don't have an independent memory now as
18 to what Dr. Marshall would or would not have testified
19 to.

20 Q. You don't recall today whether he would have
21 supported a defense or not supported the defense?

22 A. I do not specifically recall what Dr. Marshall
23 would have said.

24 Q. So if you testified at the post conviction hearing
25 about those matters, would you basically rely upon that

1 testimony?

2 A. Yes, I believe I would.

3 Q. With regard to the psychiatric evaluation -- of
4 course, this defendant, this petitioner was evaluated at
5 Middle Tennessee Mental Health Institute, correct?

6 A. He was given a standard competency evaluation that
7 is often done in cases of this nature.

8 Q. 30 day in-residence evaluation, is that correct?

9 A. It would normally be in the area of 30 days.

10 Q. And that was at the request of his counsel,
11 correct?

12 A. I believe Mr. McAlpin made that request.

13 Q. There has been some talk that later at or near the
14 trial that you had considered or you had filed an
15 additional request for mental evaluation, correct?

16 There was some discussion about that on
17 your direct examination?

18 A. Yes. There was a motion prepared. I don't
19 believe it was filed dealing with a psychiatric --
20 further psychiatric evaluation.

21 I think as the trial progressed and on
22 looking back on it now, I think that I should have sought
23 out further psychiatric evaluation.

24 I think it became evident during the
25 course of the trial that Mr. Jones -- and in Mr. Camp's

1 opinion and my opinion had some psychiatric or
2 psychological issues we may not have fully realized early
3 on in the case.

4 Q. But, of course, he was evaluated at Middle
5 Tennessee and you did have access to that?

6 A. That's correct.

7 Q. Essentially you were considering asking the court
8 for a second evaluation, correct?

9 A. Well, yes. The Middle Tennessee Mental Health
10 evaluation normally deals primarily with competency to
11 stand trial and possibly whether or not an insanity
12 defense can be supported.

13 I believe that as the months wore on that
14 my belief on the psychiatric issue was gearing more over
15 toward the sentencing phase and that possibly there would
16 be some issues that could have been presented there.

17 Based upon the documents that I have now
18 seen subsequent to the trial, I feel that my performance
19 certainly did not satisfy the standards that I adhere to
20 myself as far as pursuing the psychiatric aspect,
21 particularly at the sentencing hearing.

22 Q. In the motion it said independent psychiatric
23 evaluation, correct?

24 A. That is basically phraseology, just means a
25 private psychologist, psychiatrist.

1 Independent did not -- that is meant other
2 than Middle Tennessee Mental Health Institute.

3 Q. You weren't happy with what Middle Tennessee
4 Mental Health told you so you were trying to find
5 somebody that may have given you something to help you,
6 in essence?

7 Isn't that what you were asking the court
8 to do?

9 A. Yes. That is often the situation in serious
10 criminal cases, that sometimes Middle Tennessee Mental
11 Health will help us, sometimes they will not. It depends
12 on the individual case and individual doctors at MTMHI
13 that may be involved.

14 Q. And in this case they can't reach the conclusion
15 this defendant wasn't mentally ill, he didn't have a
16 mental illness and they didn't diagnosis any mental
17 disorder and, therefore, you essentially were seeking a
18 further evaluation to see if somebody else may be able to
19 give you something you could use?

20 A. That is correct. With an emphasis primarily not
21 only upon the insanity defense but also on whether or not
22 there were some serious mental illness issues that could
23 be advanced as a mitigating factor at the sentencing
24 phase.

25 Q. Of course Middle Tennessee Mental Health said

1 there were no illnesses and you were aware of that?

2 MR. REDICK: Objection. I don't believe
3 Middle Tennessee Mental Health said that.

4 THE COURT: That is sustained. I think
5 that is a complicated report.

6 Mr. Baker's free to pull out portions of
7 it and refer to it. I think we have to be careful how we
8 characterize it.

9 Let's establish if the witness seen it at
10 the appropriate time.

11 Q. You had the Tennessee Mental Health report prior
12 to trial?

13 A. Prior to trial Mr. Camp reviewed it and had seen
14 it.

15 Q. It is your opinion that that evaluation would not
16 be helpful to you, correct, at the guilt or innocence
17 phase?

18 A. Certainly the initial report which is to some
19 extent of the form used, that certainly would not be
20 helpful to us.

21 The actual contents, the more detail
22 contents such as nursing notes and individual
23 observations, I don't have an independent memory as of
24 this time but certainly the form statement that went out
25 to Mr. McAlpin indicating an insanity defense could not

1 be supported certainly would not be to our favor.

2 Q. With regard to Mr. Jones' appearance to you, you
3 did not believe -- you did not -- he did not appear to
4 you to be seriously mentally ill, did he?

5 A. Yes, at the time I first spoke with Mr. Jones, I
6 did not at that time believe he was seriously mentally
7 ill.

8 Q. If your post conviction testimony indicates you
9 testified that Jones did not appear seriously mentally
10 ill at trial, he was articulate, he appeared to be
11 sincere, do you contradict that testimony today?

12 A. No, I do not. At the trial I thought certainly
13 during the direct examination at the sentencing phase he
14 made a good appearance and he was articulate.

15 Q. The post conviction hearing, you testified that
16 with regard to the sentencing phase that based upon your
17 discussions with Mr. Camp and with Dr. Marshall you made
18 the strategic diagnoses not to call Dr. Marshall as a
19 witness in part because Dr. Marshall was of the opinion
20 that the petitioner was malingering or faking. Do you
21 recall that now?

22 A. Now that you have read that to me, I do recall it
23 now, yes.

24 Q. And is that an accurate statement?

25 A. I can't today dispute that testimony. That was

1 several years ago. I think that is an accurate
2 statement.

3 Q. And you had also testified at that same hearing
4 that the psychological testimony revealed -- you feared
5 that the psychological testimony would reveal that Jones
6 is not only mean but he is also dangerous.

7 Do you recall thinking about that?

8 A. I think any time you introduce proof of mental
9 illness or psychiatric testimony that it may be a double
10 edged sword.

11 Mental illness testimony at a sentencing
12 phase can be very powerful in asking jurors to spare a
13 defendant's life. But there is another side of that
14 issue where a jury may feel that the psychiatric
15 testimony depicts someone who is abnormally dangerous and
16 that weighs against you.

17 It is sometimes a judgment call that a
18 lawyer has to make.

19 But certainly proof of mental illness can
20 be a very strong mitigating factor that would lead at
21 least one or two jurors to spare a person's life.

22 Q. If information would have been revealed that
23 portrayed Mr. Jones as a very violent person with a long
24 violent history, is that something you think would be
25 favorable to him in front of a jury?

1 MR. MACLEAN: Objection. This is -- I
2 don't think it is relevant to anything.

3 THE COURT: Overruled.

4 Mr. Barrett can say what he did, why he
5 did it? He is certainly aware there was a history of
6 violence and he was aware there were mental health
7 issues, and why he did what he did or why he didn't do
8 what he did.

9 It goes directly to the ineffective
10 assistance of counsel claim, and the state court in this
11 particular case -- one of the state courts already said
12 that Mr. Jones received ineffective assistance of
13 counsel, that essentially the context of this case it was
14 not error that resulted in an unconstitutional
15 proceeding.

16 I think this is a very important question.

17 Go ahead.

18 A. I am sorry. Could you repeat the question,
19 please?

20 Q. If Mr. Jones' past history indicated that he had
21 in fact -- was a very violent person with a long violent
22 history, that is not something that would be favorable to
23 him in front of a jury, would it?

24 A. No, it would not be.

25 Q. Now, are you aware or have you seen the records

1 of Mr. Jones' past history, prison records, school
2 records?

3 A. I have seen the records, or at least a substantial
4 amount of the records subsequent to the trial and
5 particularly during this federal post conviction
6 proceeding.

7 Q. You are aware that he was in Annadale, New Jersey
8 confinement for assault with a deadly weapon in 1966?

9 A. Yes, I was aware of that.

10 Q. Assault of a policeman in 1967 where that --

11 A. I have seen some of the documents that have been
12 provided. I am aware that there are several arrests and
13 indications of violent conduct.

14 Although, I am not certain that I was
15 aware of those at the time of the trial in 1987.

16 Q. Were you aware he had records that indicated he
17 expressed bizarre attempts in killing a 19 year old
18 girl?

19 A. I don't have any independent memory of that.

20 Q. Are you aware of reports that describe him as an
21 explosive, immature young man that overreacts to
22 frustrations?

23 A. I do not have a memory of seeing that particular
24 report.

25 Q. Is that something you think would be favorable to

1 him in front of a jury?

2 A. No. Obviously it would not be favorable in front
3 of a jury.

4 Q. Similar statements in the record indicate he had
5 an attitude of extreme anger and hostility toward
6 authority, he had a long history of inability to get
7 along with others, innumerable assaults and fights.

8 That won't be favorable?

9 A. Normally not.

10 Q. You know about his '72 conviction for second
11 degree murder?

12 A. That's correct.

13 Q. The facts of that case indicated that in fact it
14 wasn't self-defense but actually a brutal stabbing.

15 That would not be something favorable to
16 him, would it?

17 A. No, that would not help.

18 Q. Now, if there are prison reports that have
19 indicated repeated instances of misconduct during his
20 time in federal prison, that would not be something
21 favorable either, would it?

22 A. No.

23 Q. For example, use of heroin, cocaine as indicated
24 in prison records. Is that something that would be
25 favorable to him?

1 A. No. Obviously that would not be favorable to
2 someone at a sentencing phase, although I should point
3 out I am not aware that I was aware of those records at
4 the time we were conducting the sentencing phase.

5 Q. I am aware of that.

6 In this case where he is claiming to rid
7 the community of drugs, drug dealers, records indicating
8 that he in fact had a long history of drug use would not
9 be something that would be favorable to him in front of a
10 jury, would it?

11 A. That's right.

12 Q. If he had numerous -- had been written up in
13 prison on numerous inferences for lying to staff, that
14 would not be something favorable to him, would it?

15 A. No, it would not.

16 Q. If he was described as a super militant, that
17 wouldn't be favorable, would it?

18 A. That's correct.

19 Q. If he had escaped from prison, that wouldn't be
20 favorable either?

21 A. No.

22 Q. Are you aware he escaped from federal prison?

23 A. I can't say at this time I was at that time aware
24 of it. I am not certain.

25 Q. If there was records indicating that while in an

1 escape status from prison that he was a witness to a
2 murder and lied to authorities about that murder, that
3 would not be something favorable to him, would it?

4 A. No, it wouldn't be.

5 Q. Are you aware of the case in South Dakota in which
6 that was his testimony?

7 A. I have become somewhat aware of the situation in
8 South Dakota subsequent to the post conviction relief
9 proceedings.

10 Q. So basically when you say things may or may not be
11 helpful to the petitioner, you have to look at the
12 individual case and you to look at everything before you
13 can really say that?

14 A. That's correct. Each case is individualized.
15 Different juries, different defendants.

16 To some extent it is a gut reaction as to
17 what may be favorable in one case may not be favorable in
18 another.

19 Q. Now, did Mr. Jones in regard to this case ever
20 tell you a Sam Black --

21 THE COURT: Stock.

22 Q. -- Blackstock was involved in this crime?

23 Did he ever tell you that?

24 A. There is something in my notes -- in my memory
25 there is some indication that at an early stage that name

1 did appear in my interview with Mr. Jones.

2 Q. Did you ever find any evidence of a Blackstock or
3 aware of any?

4 A. No, I didn't. I am not sure that Mr. Jones really
5 persisted in that position.

6 Q. There was testimony about concern for jury
7 tampering at the trial.

8 Do you recall that on your direct
9 examination?

10 A. I believe what was made reference to was when Mr.
11 Zimmermann requested Mr. Camp and I return the jury
12 questionnaires or the jury lists we had. That was the
13 reason apparently, was that Mr. Zimmermann indicated that
14 he wanted to somehow protect the anonymity or at least
15 the privacy of the jurors.

16 Q. Now, the testimony from the state court records
17 indicates that Mr. Zimmermann said that he received that
18 information from the defense and from co-defendant
19 Miller.

20 Do you recall what he would have received
21 from you regarding that?

22 A. I am certain there would have been some
23 generalized discussion about Mr. Boyd and Mr. Beard and
24 the Southeastern Gospel organization.

25 But I know that when Mr. Zimmermann

1 requested that we turn in our jury lists that I certainly
2 was shocked and it is my belief that most of his
3 information must have come from Devalle Miller.

4 Q. With regard to the petitioner's story, his basic
5 defense was that he was -- basic explanation for the
6 crime was that he was there to rid the community of drug
7 dealers.

8 That was the goal?

9 A. Yes, that is correct.

10 Q. Of course there was evidence in this case that he,
11 himself, was using drugs before and after the crime. You
12 remember that, don't you?

13 A. I do.

14 Q. Now, that is a pretty serious inconsistency,
15 wouldn't you agree?

16 A. Mr. Camp and I were concerned with that,
17 particularly the usage after the offense was committed.

18 Q. But certainly it affects the credibility of that
19 defense, is that correct, or that story?

20 A. It did not strengthen our position.

21 Q. And as you say that is something that you all
22 talked about?

23 A. Well, I do recall that the drug usage I believe
24 subsequent to the incident was a factor that I felt
25 weakened my position.

1 Q. Do you recall Norma Norman's testimony where she
2 stated the petitioner threatened to snap the heads off
3 her children?

4 Do you recall that?

5 A. Oh, I remember her testifying but at this time I
6 haven't reviewed the transcript. I can't recall the
7 exact words she used.

8 I certainly heard it, what she said. I
9 don't have memory of it right now.

10 Q. Assuming she stated that in the testimony, that
11 would be inconsistent with the notion that the petitioner
12 was concerned for the safety of the children?

13 A. Well, yes, that would be.

14 MR. BAKER: Just one second, Your Honor.
15 Just one minute, Your Honor. I am reviewing my notes.

16 THE COURT: All right.

17 Q. You have a pretty good open communication with the
18 prosecution as far as your ability to talk to them,
19 wouldn't you say?

20 A. Yes.

21 Q. Probably better than most attorneys?

22 A. Yes. I think that the District Attorney's Office
23 and I always have had an open and frank ability to
24 discuss cases.

25 Q. Were you able to use that ability in this case as

1 well?

2 A. Yes.

3 Q. And you have a similar ability with the police
4 department, wouldn't you agree?

5 A. I am sorry. With the --

6 Q. With regard to defense attorneys, you have a
7 pretty good ability to be able to talk to policemen as
8 well?

9 A. Yes.

10 Q. Probably better than most?

11 A. I think that is true.

12 Q. Were you able to use that ability in this case?

13 A. Well, in this particular case I think I certainly
14 had more conversations with the District Attorney
15 General's Office than I did with individual law
16 enforcement officers in the case.

17 Q. And in this case although you testified you did
18 not personally inspect the physical evidence, you knew
19 what physical evidence the state had, correct?

20 A. Yes. I was aware of the physical evidence that
21 the state did have.

22 Q. Of course you testified you were aware of Mr.
23 Miller's statement, correct?

24 A. I became aware of Mr. Miller's statement I believe
25 when some Jencks' material was turned over to me that

1 detailed it.

2 I certainly ascertained Mr. Miller would
3 be an adverse witness and was going to be testifying
4 against the position of Mr. Jones.

5 MR. PRUDEN: I believe that is all, Your
6 Honor.

7 THE COURT: I have a couple questions.

8 Mr. Barrett, there are two general issues
9 that have been raised that concern some of the things
10 that occurred in this case that relate to your testimony.
11 On one side there is the question of an alleged conflict
12 of interest, on another side there is a question of
13 ineffective assistance of counsel.

14 And on the conflict of interest there
15 seems to be some conflict, at least in the facts
16 presented so far, that whether you knew the source of the
17 funds that provided the \$5,000 fee you received.

18 My memory of your testimony is you have a
19 reasonable recall that you did not know that Mr. Allen
20 Boyd may have provided the funds if indeed he did and
21 that there certainly has been some facts brought forth
22 that Ms. Gail Hughes Mann told you that Mr. Boyd provided
23 some funds. And Ms. Mann is currently evading the
24 process. We don't quite know what she would say if and
25 when we find her.

1 But the ultimate issue there is whether
2 there was an appearance of conflict or actual conflict
3 and if there was an actual conflict whether it affected
4 any of your decisions in the case.

5 My really frank, direct question to you is
6 whether the source of the funds as you understood them
7 affected any of your decision making in this particular
8 case as to what strategy to pursue or not pursue?

9 A. Your Honor, I am as certain as a person can be
10 from something that happened 10 years ago that I
11 absolutely had no knowledge that these funds came from
12 Mr. Boyd.

13 For the sake of argument only -- the even
14 if I had been told these funds came from Allen Boyd, I
15 would have had absolutely no hesitancy in going after him
16 in any way I could and would think he had wasted his
17 money if that is what he was attempting to do.

18 I am absolutely certain that there was no
19 decision, no single issue of strategy, not one question
20 that Mr. Camp or I asked or did not ask had anything to
21 do with the source of the funds that came from Ms. Hughes
22 or from Allen Boyd.

23 THE COURT: Would that opinion be affected
24 if you were advised that Mr. Boyd is now taking the Fifth
25 Amendment in this case?

1 A. No. I have no way of knowing where the funds came
2 from. If Mr. Boyd is taking the Fifth Amendment, I can
3 only speculate.

4 THE COURT: I want to make it clear.
5 There may be other reasons. I don't know what reasons he
6 is taking the Fifth Amendment. He was noticed for a
7 deposition and gave his deposition and invoked the Fifth
8 Amendment. It could be something that occurred 10 years
9 ago, could be something that occurred last week. I don't
10 know. That is the case now.

11 We have Ms. Mann on the run and Mr. Boyd
12 and Mr. Beard taking the Fifth Amendment. And we have
13 got some suggestions that the strategy in this case may
14 have been influenced by the source of funds.

15 I wanted -- since all that is out there
16 being thrown up -- to see what is true or not true. That
17 all has been laid in my lap. I feel a need to let you
18 respond to that. I wanted to give you that context.

19 Anything else you want to say in that
20 regard?

21 A. No. I think that my position is clear. Since
22 the topic did come up, I would just -- my professional
23 belief as to Mr. Boyd taking the -- which I wasn't
24 totally aware of, but Mr. Boyd taking the Fifth Amendment
25 or electing not to testify would be my belief from what I

1 sense and what I have seen develop in this case that it
2 would have more to do with the truthfulness of the
3 statements that he made of being involved in some
4 paramilitary activity.

5 But I had no way -- never thought that Mr.
6 Boyd or Mr. Beard or that organization provided any of
7 the funding that went to help Mr. Jones.

8 THE COURT: All right. There also has
9 been a suggestion, at least an inference, that because
10 you didn't get all the money, you maybe didn't provide
11 all the service.

12 I guess that is about as direct as I could
13 put it. And that half a fee got half a job. Any
14 response to that?

15 A. Well, I think most criminal defense lawyers,
16 particularly lawyers that are involved in death penalty
17 cases often find themselves in situations where resources
18 to some extent are limited.

19 Certainly had there been unlimited or
20 additional funding in this case, things might have been
21 done differently. But I am confident that the amount of
22 fees that was paid did not affect the efforts that Mr.
23 Camp and I put forward in the case.

24 Often defense lawyers find themselves
25 having to devote time in matters which they have not been

1 fully compensated. That is part of the hazards of
2 criminal defense work.

3 I do think, however -- certainly had there
4 been more funding available that very likely we would
5 have sought additional psychiatric assistance.

6 On the area of private investigators, I
7 don't think it is quite significant. I traditionally
8 have not relied upon private investigators to the extent
9 that some other members of the bar do. That is just a
10 personal preference.

11 A question was raised about, for example,
12 someone to assist in the jury selection, a jury
13 psychiatrist or assistant.

14 Had we had unlimited funding, I would not
15 have done that. It is just a practice I do not believe
16 in or something I don't use.

17 So, certainly in the area of professional
18 psychological and psychiatric assistance, in looking back
19 on the situation, that is the area that I would have
20 primarily done it different today than if I was redoing
21 it.

22 THE COURT: All right. I really should
23 have said a third of a fee instead of half. Was speaking
24 metaphorically.

25 To be precise, I wanted to clear the

1 record in that regard.

2 You indicated if you had more money you
3 might have done different things. I understand that.

4 That then raises the question that has
5 been set up for consideration of why didn't you have him
6 declared indigent?

7 A. I wish I could answer that. I think the best
8 answer is, Your Honor, at the outset of the case -- again
9 going back particularly to the psychiatric aspects of it
10 or mental health issues, I did not really perceive them
11 as being as significant as I now do.

12 At the outset I thought this was a case
13 that Mr. Camp and our staff could handle there in our
14 office without the necessity of expert witnesses and
15 investigators.

16 In the field of the mental health issues
17 we have discussed here, as we went on through the course
18 of the trial, it did become evident to me I might have
19 not estimated the necessity to do the further work in
20 that area.

21 THE COURT: Well, another direct question.
22 Why didn't you investigate his mental health and why
23 didn't you put on mental health testimony at least at the
24 sentencing phase that you did have?

25 You at least had access to Dr. Marshall

1 and Dr. Craddock and maybe some other things.

2 What was the reason for that omission and
3 why do you think that was a wise strategy, if you do?

4 A. After talking -- my memory is that after talking
5 to Dr. Marshall, Mr. Camp and I made a decision not to
6 utilize him.

7 THE COURT: Do you recall why? He was
8 under subpoena, right, and he was there?

9 A. Yes. I can't recall other than it was my belief
10 now that some of the testimony that Dr. Marshall had was
11 not going to, in my opinion, assist us.

12 I do not at this exact moment have a clear
13 memory but the testimony of the previous petition for
14 post conviction relief about maybe Dr. Marshall
15 indicating that there might have been some malingering --
16 there was something negative in my belief by Dr. Marshall
17 that we made a conscious decision not to use him.

18 THE COURT: That raises the question if he
19 didn't advance your case as your to view, why didn't you
20 seek a different opinion from a different expert?

21 A. In retrospect I think I should have done that.

22 THE COURT: You indicated -- I think your
23 words were -- your performance did not satisfy your
24 standards.

25 Is that what you were referring to in that

1 sentence or were you referring to something else?

2 A. No, I was primarily referring to the sentencing
3 phase more than the guilt or innocence phase. But that
4 comment was directed primarily to the mental health
5 issues that have been raised that could have been raised
6 either in possibly an insanity defense or at the
7 sentencing phase.

8 Although I am still -- after reviewing the
9 records I have now seen, I think, that it would be more
10 successful or more relevant at the sentencing phase than
11 the guilt or innocence phase.

12 THE COURT: That was the context for my
13 questions about Dr. Marshall and a second opinion. It
14 was more mitigation.

15 You had several witnesses subpoenaed to
16 testify at the mitigation or sentencing hearing as
17 mitigation witnesses. You said you had Beard and Boyd
18 and maybe some other folks.

19 What was the reason that they were but
20 were not called?

21 A. I subpoenaed them thinking that I might want to
22 use them as a witness. Somewhere early on at the
23 sentencing hearing, either before I started or in an
24 early point in the sentencing hearing, there was a break
25 where I went out and spoke to Mr. Beard and Boyd and told

1 them I subpoenaed them there and told them in general
2 where we were, that we were at a sentencing phase of the
3 trial.

4 I had a conversation with them and based
5 upon that conversation I made a determination that they
6 were not going to be helpful witnesses to Mr. Jones.

7 THE COURT: Do you recall the basis for,
8 the factual basis of that determination?

9 A. No, sir. I think it probably dealt with my
10 discussing with them allegations that there had been the
11 Southeastern Gospel association of what their names had
12 certainly been mentioned.

13 My memory is that in discussing it with
14 them that they discarded that and said, well, that is
15 ludicrous or there is no foundation for that, that we
16 might have known Mr. Jones through some social, civic
17 activity but they certainly were not, obviously, going to
18 really incriminate themselves.

19 At that time I did not necessarily believe
20 that there was a hundred percent degree of substance and
21 reliability to the stories of their involvement in the
22 paramilitary activities that we had known.

23 Had I known that Devalle Miller had, I
24 believe, given a statement to the District Attorney
25 General's Office which he supported the testimony of Mr.

1 Jones, then I think that certainly would have put it in a
2 different light.

3 But I was not made aware as I have later
4 been that there apparently has been an interview given
5 during the trial where Mr. Devalle Miller told the
6 District Attorney's Office, yes, we were involved in this
7 type of organization. I did not have access to that.

8 Accordingly, I did not give as much weight
9 to that as I now do.

10 THE COURT: Why wasn't that document given
11 to you, do you know?

12 A. No, sir. I was only made aware of that document
13 during the last several weeks or so in my conversations
14 with the attorneys for Mr. Jones.

15 THE COURT: You also said you had not been
16 given the document that I have seen copies of that there
17 wasn't any blood on two pairs of pants and a coat that
18 was seized from Mr. Jones' apartment.

19 Did I hear you correctly you had not seen
20 that document?

21 A. I believe that document referred to was in the
22 discovery material that had been provided to Mr. McAlpin.

23 For reasons still unclear to me now, I did
24 not have that information.

25 Q. Do you recall why you didn't get the file from Mr.

1 McAlpin?

2 A. I did not. Until this post conviction proceeding,
3 I was of the belief that I had. But obviously I did not.

4 THE COURT: Mr. Zimmermann said in one of
5 his original correspondences to you, where he
6 supplemented his discovery response, he said something to
7 the effect of I already have given some things to Mr.
8 McAlpin, if you need them, I will give them to you.

9 Do you recall a request to him for those
10 copies?

11 A. No, I do not.

12 THE COURT: There also has been some
13 discussion about a prior conviction record, prior mental
14 health evaluations, prior incarceration records.

15 Any particular reason you didn't get those
16 documents?

17 A. Some of them I am not certain, Your Honor, I was
18 aware of. The information that I had obtained came
19 largely from Mr. Jones himself.

20 Some of the periods of psychiatric
21 evaluation and testing that I have seen that Mr. MacLean
22 and Mr. Redick have secured, I was not until recently
23 aware that they existed.

24 THE COURT: All right. I will give
25 everyone a chance to follow-up on any of that, if they

1 want.

2 Mr. Redick and Mr. MacLean, you can go
3 first and then Mr. Baker, if you want to do any
4 follow-up.

5 In any event, you can do redirect. You
6 have an opportunity for redirect. I wanted to ask my
7 questions before you did that.

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EXAMINATION OF LIONEL BARRETT

BY MR. MACLEAN:

Q. Mr. Barrett, based upon the memos that you wrote to Gwen, your secretary, starting back in October and November of 1986, isn't it true that you did not start work on the case because you had not -- until later -- because you had not received the fee you requested?

A. Yes, I had not been obtained by Mr. Jones or friends of his and Mr. McAlpin, at least to some extent, was still involved in the case.

I understood that Mr. McAlpin was probably not going to be involved in the case.

Q. But in November and December you accepted a \$5,000 payment and you kept writing memos to Gwen to find out when you could get the next \$10,000, correct?

A. That's correct.

Q. In those memos you said to Gwen I have to get started on this case soon, this is a big case, find out when I can get the money, correct?

A. That's right.

Q. Yet you didn't start working on the case until sometime around March of 1987, correct?

A. That's correct.

Q. Even though you accepted that \$5,000 payment in the beginning, you did not get started working on the

1 case until several months later because you had not
2 received the balance, is that correct?

3 A. That's correct. I kept believing that the money
4 was going to be forthcoming. Apparently it wasn't and so
5 at that time Mr. Camp and I decided -- I decided to go
6 ahead and proceed with the case.

7 Q. On the sentencing phase proof, you never sat down
8 with any witness before the trial to talk about what that
9 witness could or might say on Mr. Jones' behalf in
10 mitigation, did you?

11 A. I am not certain of that. I know that the
12 witnesses were speaking about -- or in my viewpoint Mr.
13 Jones and Ms. Hughes and whether or not I believe I had
14 some conversation before their testimony at the
15 sentencing hearing.

16 Q. You didn't sit down with Mr. Boyd before the
17 sentencing hearing to talk about what he might say for
18 Mr. Jones in the trial?

19 A. That's correct.

20 Q. And you didn't sit down with Mr. Beard before the
21 sentencing hearing to find out what he might say for Mr.
22 Jones in the trial?

23 A. I believe I had a conversation for some reason
24 with Mr. Beard prior to the sentencing hearing. I never
25 did believe that they were really going to be strong

1 witnesses for Mr. Jones.

2 But I did subpoena them out of an
3 abundance of caution and spoke to them at the sentencing
4 hearing and confirmed what I already suspected.

5 Q. Isn't it true that Mrs. Hughes wasn't subpoenaed
6 for the sentencing hearing?

7 A. I doubt she would be subpoenaed because all the
8 conversations I had with Ms. Hughes there was never any
9 doubt in my mind she would be there.

10 Q. You didn't call her as a witness at the sentencing
11 hearing?

12 A. I may not have. I do recall that she was present
13 and while it is only my brief now there was some
14 extrinsic reason why I did not. At the moment I can't
15 tell you why.

16 Q. Isn't it true that you subpoenaed Dr. Marshall to
17 the sentencing hearing before you talked to him about the
18 case?

19 A. That could be.

20 Q. Isn't it true that when he came to the courthouse
21 the only time that there was any discussion with him
22 about the case was during the actual trial?

23 A. That is probably correct. I believe Mr. Camp and
24 I had secured I think some of the records from Middle
25 Tennessee Mental Health Institute by that time that may

1 have had a report from Dr. Marshall in the file.

2 Q. Isn't it true that it was Mr. Camp that went out
3 in the hallway to meet with Dr. Marshall while the trial
4 was going on?

5 A. That very well may be.

6 Q. Isn't it true that it was Mr. Camp that talked to
7 Dr. Marshall and not you?

8 A. I have known Dr. Marshall. In this particular
9 case it may have been Mr. Camp. I believe to some extent
10 part of the overall psychiatric aspect of it was one of
11 the area that Mr. Camp was working with me on it.

12 It very well may have been that Mr. Camp
13 spoke to him.

14 Q. It may will be that you didn't talk to him?

15 A. Yes.

16 Q. Now, Mr. Barrett, if one juror in the sentencing
17 hearing votes for life then the defendant gets life,
18 correct?

19 A. That's correct.

20 Q. And isn't it true at the sentencing hearing it is
21 important to explain to the jury everything about the
22 person they are about to pass this judgment on?

23 A. You want to try to explain to the jury why this
24 offense happened and why they already convicted a
25 defendant, why this defendant would have done something

1 of this nature.

2 Q. And if the defendant has a past history of
3 violence it is important you explain that violence and
4 that past history to the jury in some fashion, correct?

5 A. If you can. In some cases it is a preferable
6 strategy to try as much as possible to down-play it and
7 try to avoid it as it is to explain it.

8 In this particular case some of the
9 instances of violence I was cross-examined about I
10 probably wasn't aware about at the time of his sentencing
11 hearing.

12 The sentencing hearing did come down to
13 largely the hope that the defendant could present himself
14 in a light that would make one juror sympathetic and not
15 vote for the death penalty.

16 Q. You didn't really spend a lot of time with this
17 defendant preparing him to testify?

18 A. That very well may be true. However, there are
19 occasions where you do not -- at least in my experience,
20 you can be almost too rehearsed.

21 It is my memory and belief he did make an
22 excellent witness on direct examination. On
23 cross-examination he did not fair as well.

24 Q. He broke down, didn't he, within a few seconds of
25 the beginning of the cross?

1 A. He broke down at some point during the
2 cross-examination. It can be argued as to whether or not
3 that was good or bad for him. I don't have an
4 independent memory.

5 Yes, he did become pretty emotional on Mr.
6 Zimmermann's cross-examination.

7 Q. Now, Mr. Barrett, Mr. Baker asked you about some
8 specific instances in the records, but is it important
9 for a jury to understand this defendant was raised in a
10 family environment where the mother did not form a normal
11 maternal bond with the child?

12 A. Yes, I think that could be important.

13 Q. Isn't it important for the jury to understand that
14 the defendant grew up in a home where his father would
15 beat him?

16 A. Yes. I think some jurors would find that
17 significant.

18 Q. And wouldn't jurors find it significant to learn
19 that the defendant as he was growing up in this home
20 environment would be tied up by the father and thrown in
21 a closet and kept in the dark closet by himself hog tied
22 for a period of time?

23 A. Yes if the jury believed that it would be
24 significant.

25 Q. Wouldn't it be significant if the jury learned

1 that the father would tie up the defendant's penis with
2 one end a line and put the other end of the line around a
3 coat hangar, wouldn't that be something the jury found
4 significant?

5 A. If they found that to be true yes, it would.

6 Q. Wouldn't the jury find it significant while the
7 child is experiencing this kind of physical abuse from
8 the father the mother is not providing any kind of
9 intervention or support for the child?

10 A. Yes, I think that would be important.

11 Q. Wouldn't it be important for the jury to
12 understand that when this happens to a child it affects
13 the child's development into a human being?

14 A. Yes.

15 Q. Isn't it important for the jury to understand that
16 a child who grows up in this environment didn't choose
17 this kind of environment to grow up in?

18 A. Yes, I think that can affect some jurors.

19 Q. And isn't it important for the jurors to
20 understand that when a child grows up in this kind of
21 environment that can create a personality disorder in the
22 child?

23 A. I think so.

24 Q. And that that personality disorder can create
25 extreme emotional disturbance and emotional pain in the

1 child and in that person as that person grows up?

2 A. Yes.

3 Q. And that this can help explain the kinds of
4 behaviors that that person displays as that person grows
5 up?

6 A. It could.

7 Q. And isn't it important for the jury to understand
8 that a child who's treated this way and who develops this
9 kind of disorder didn't choose to develop this kind of
10 disorder?

11 A. Yes, I think some jurors would be influenced by
12 that.

13 Q. And you only need one juror to be influenced
14 enough to vote for life in order for the defendant to get
15 life?

16 A. That's correct.

17 Q. And you only need one juror to understand that
18 there is a connection between this early childhood abuse
19 and the disturbed emotional condition and psychological
20 condition and behavioral condition of the defendant as
21 the defendant goes through life?

22 A. That's correct.

23 Q. And it only requires one juror to feel sympathy
24 for a defendant who has no place to turn from the time he
25 is 15 years old, isn't that right?

1 A. Yes, I think some jurors would be influenced by
2 that.

3 Q. And some jurors are going to be influenced by the
4 fact that the a defendant when he gets in trouble at the
5 age of 18 or 19 and he calls his father for help and it
6 is the first time he has been able to communicate with
7 his father for three or four years and the father says,
8 nigger, you got into this problem now, nigger, you get
9 yourself out of it, and that is the only communication he
10 had with his father until he was 35 years old.

11 Isn't that significant to some jurors?

12 A. Yes. I think if a juror believed that, found that
13 to be credible, it could have an impact.

14 MR. MACLEAN: Just a second, Your Honor.

15 That is all.

16 THE COURT: Mr. Baker.

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EXAMINATION OF LIONEL BARRETT

BY MR. BAKER:

Q. Mr. Barrett, you agree if you in the sentencing hearing put on psychological testimony it basically opening inquiry into this person's life, correct?

A. That's correct.

Q. Good and the bad?

A. Yes. You have to be concerned about inadvertently opening a door you would prefer to keep closed.

Q. Like in this case, you wanted to stay as far away from this '72 murder conviction as you could, correct?

A. As much as I could, that is correct.

Q. And you would likewise want to stay away as much as possible from other evidence of prior violent history, wouldn't you?

A. Yes, that is true in any sense of things.

Q. You would want to stay away from information that this defendant rationalized his antisocial behavior on his father's stern disciplinary measures?

A. Well, yes, that wouldn't help him.

Q. And again, as we talked earlier, you would want to prevent the jury from hearing about a manipulative, violent, deceptive man, correct?

A. That's correct.

1 Q. These are things that a defense counsel has to
2 think about when he is going to open the door to a
3 person's life, correct?

4 A. Well, yes. You have to be concerned about all
5 those items.

6 Q. And, therefore, if the balance weighs in favor of
7 not putting on the complete story of the man's life then
8 you don't, right?

9 A. That is correct. Although defense counsel should
10 be fully aware and should investigate enough to
11 understand the complete story.

12 Q. I understand that. But ultimately somebody has
13 got to decide whether this information would be helpful
14 to the person, right?

15 A. Yes. It is a call based upon the atmosphere in
16 the courtroom, the way the jury looks at things. It is
17 somewhat intangible.

18 Q. If prior records indicated that the individual had
19 no serious mental illness, that would be something you
20 would factor into that analysis as well, wouldn't it?

21 A. Yes.

22 MR. BAKER: That is all.

23 THE COURT: All right. Mr. MacLean, you
24 have one question.

25

EXAMINATION OF LIONEL BARRETT

BY MR. MACLEAN:

Q. Mr. Barrett, in order to make that kind of decision of what kind of proof to put on in mitigation and how to develop a mitigation case, in accordance to understand how to make that decision, you need to know as much about the defendant and his background as you possibly can know?

A. Sure.

Q. Until you know everything, you are really not in a position to make any kind of strategic decision about that, is that correct?

A. You can make some strategic decisions but they wouldn't be as accurate as if you knew everything.

MR. MACLEAN: Thank you.

THE COURT: You may step down, Mr. Barrett. Thank you.

I believe I understand this portion of the case. I understand where the lines are drawn. I understand the views of the parties. I think I understand the evidence so far.

I appreciate the excellent presentation. You are all doing a great job.

We will resume at nine in the morning unless somebody can tell me why we shouldn't start at

1 nine o'clock.

2 Is that acceptable? Do you need witnesses
3 to be taken earlier or anything like that?

4 MR. MACLEAN: No, Your Honor. I just
5 realized the time. One of our witnesses is due at the
6 airport right now. I don't know what to do about that.

7 Our next witness was going to be Sumter
8 Camp. But because of the witnesses coming in from out of
9 town on both sides, we will to have put him off, I think.

10 Tomorrow is going to be the psychological
11 proof, I think.

12 THE COURT: All right. Well, I guess you
13 need to leave to go to the airport.

14 MR. MACLEAN: Yes.

15 THE COURT: There is taxi service.

16 MR. MACLEAN: He doesn't know that. He
17 knows there is taxi service. He doesn't know we are not
18 going to be there.

19 THE COURT: All right. We will start at
20 nine o'clock. We can talk tomorrow about when you want
21 to put on Mr. Camp.

22 It may be we need -- depending on how long
23 you think these witnesses tomorrow will be, maybe we can
24 take him after they are done.

25 It seems to me witnesses are going longer

1 than expected rather than shorter than expected. That is
2 life.

3 Anything else?

4 MR. BAKER: No, Your Honor.

5 MR. REDICK: No, Your Honor.

6 THE COURT: See you in the morning. Thank
7 you.

8 (Whereupon, the hearing was in recess.)
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